

PROCEEDINGS AND ORDERS

DATE: [04/20/95]

CASE NBR: [94107743] CSX

STATUS: [PENDING CONFERENCE]

SHORT TITLE: [Whitaker, Fred A.]

VERSUS [Superior Court of CA]

DATE DOCKETED: [012095]

PAGE: [01]

-----DATE-----NOTE-----PROCEEDINGS & ORDERS-----

1 Jan 20 1995 R Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed.
9 Jan 20 1995 D Motion of petitioner for leave to proceed in forma pauperis filed.
13 Jan 20 1995 P Motion of petitioner for leave to proceed in forma pauperis filed.
4 Feb 22 1995 Order extending time to file response to petition until March 10, 1995.
5 Mar 10 1995 Brief of respondent Merrill Reese, Inc. in opposition filed.
6 Mar 10 1995 Supplemental brief of respondent filed.
7 Mar 16 1995 DISTRIBUTED. March 31, 1995 (Page 6)
8 Mar 27 1995 X Reply brief of petitioner filed.
12 Apr 10 1995 REDISTRIBUTED. April 14, 1995 (Page 26)
14 Apr 17 1995 Motion of petitioner for leave to proceed in forma pauperis DENIED. See Rule 39.8. Petitioner is allowed

PREVIOUS

1

1

EXIT

Last page of docket
SHDKT

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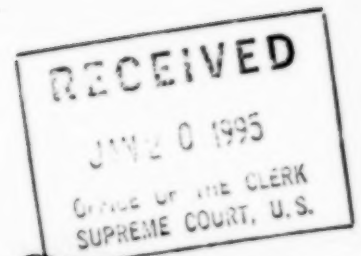
PAGE: [02]

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14 Apr 17 1995 Motion of petitioner for leave to proceed in forma pauperis DENIED. See Rule 39.8. Petitioner is allowed until May 8, 1995, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court. Opinion per curiam.

2
FRED A. WHITAKER
872 69TH AVE.
OAKLAND, CA. 94621
510-569-1343

94-7743



WRIT OF CERTIORARI
THE UNITED STATES SUPREME COURT

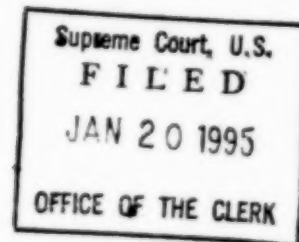
ORIGINAL

FRED A. WHITAKER APPELLANT

CASE# California Supreme Court#
SO42467

VS

SUPERIOR COURT SAN FRANCISCO
COUNTY RESPONDENT



CALIFORNIA SUPREME COURT AND
CALIFORNIA'S COURT OF APPEAL
FIRST APPELLATE DISTRICT AND MERRILL
REESE INC. REAL PARTY IN INTEREST

1.0 Petitioner (Fred A. Whitaker) asks the Supreme Court of the United States to allow him to proceed In Forma Pauperis. Attached to this Petition for A Writ of Certiorari is a declaration in support of this motion with a affidavit & declaration in support of this motion. petitioner has previously granted a right to proceed by In Forma Pauperis (cost waivers) at all appellate court levels in this case.

1/5/95

Fred A. Whitaker

Fred A Whitaker

29pp

MEMORANDUM OF POINTS AND AUTHORITIES

Committee on Children's television Inc. V general Foods Corp.
35 Cal.3d at 197 8

Briggs V Supreme Ct 215 C 336; Keating V Supreme Ct 45 C2d; Oak
Groove School Dist. V city Title Ins. Co. 217 CA2d 678; United
Farm Workers of America V Superior Ct 176 Cal.App.3d 97; Housing
authority V Superior Ct 35 C2d 550; Bodzer estate 128 CA2d 710; Auto
Equity sales Inc. V Superior Ct 57 C2d 450; LA County V Supreme
Ct 253 CA2d 670; People V Hall 86 CA3d 753; People V Superior Ct
160 Cal.App.3d 1081; Kohn V Superior Ct 239 CA2d 428; Woodman V
Silerage 263 CA2d 390; Sambrano V Superior Ct 31 CA3d 416; Zdonek
V Superior Ct 38 CA3d at 849 17

Kreting V Superior Ct 63 CA2d; Chastain V Superior Ct 14 CA2d
97; Miller V Lux Inc. V Superior Ct 19 CA2d 828; Cahoun V Superior
Ct 46 C2d 18; Blackman V Mac Coy 169 CA2d 873; Evans V Superior
Ct 107 CA 372; Keating V Superior Ct 45 C2d 440; Oak School dist.
V City Title Ins. Co. 217 CA2d 678. 18

People V Superior Court Harris 217 Cal.App.3d 1332; People V Mendazci
55 Cal.App.2d 625-633 19

Muller V Tanner 2 CA3d at 443; Taliaferro V Hoogs 236 CA2d at 528
and 237 CA2d at 74; First Western Development Corp. V Superior
Court 212 Cal.App.3d at 860; Vinncombe V State of California 172
Cal.App.2d at 54 20

Breadeau V Superior Ct 121 Cal Rptr at 585; Vinncombe V State of
California 172 Cal.2d at 54; Ruben Gonzales V Fox 68 Cal.App.3d
at supp page 16; In Allen V Jordanos 52 Cal.App.3d at 160; Rhodes
V Superior Ct 90 Cal.App.3d 488 21

(A) QUESTIONS FOR REVIEW:

(1) ALL LITIGANTS UNDER THE FEDERAL CONSTITUTIONAL HAVE A RIGHT
TO A FAIR TRIAL/HEARING. THIS RIGHT INCLUDES THE RIGHT FROM JUDICIAL
BIAS.

(2) ONCE ANY STATE COURT OF REVIEW HAS CONFERRED UPON IT'S CITIZEN'S
A RIGHT TO APPELLATE REVIEW BY WRIT OF MANDATE/PROHIBITION THAT
JUDICIAL BODY IS BOUND BY LAW TO : (A) DETERMINE THE CURRENT LAW
PERTAINING TO LEGAL ISSUE BEFORE THAT JUDICIAL BODY AND (B) DETERMINE
WHETHER THE LOWER COURT HAD COMPLIED WITH THE CURRENT LAW PRIOR
TO MAKING A DECISION WHETHER LOWER COURT ACTED IN EXCESS OF THEIR
LEGAL AUTHORITY.

(3) LOWER COURT OF LAW JUDGE VIOLATED PETITIONER'S 1ST, 5TH, 11TH
AND 14TH AMENDMENT RIGHTS BY DETERMINING PETITIONER'S LEGAL RIGHTS
WITHOUT FIRST ESTABLISHING "FACTS" BY THE PROPER RULES OF EVIDENCE
(BURDEN OF PROOF, BURDEN OF EVIDENCE, ADMISSIBILITY OF INADMISSIBILITY
OF EVIDENCE ETC)

(4) ALL LITIGANTS UNDER THE FEDERAL CONSTITUTION HAS A LEGAL RIGHT
NOT TO HAVE ANY JUDGE "DISCOUNT THEIR EVIDENCE"/LEGAL DOCUMENTS
BROUGHT BEFORE ANY COURT OF LAW AND OR REVIEW.

(5) A LITIGANT'S CONSTITUTIONAL RIGHT TO A FAIR TRIAL IS DENIED
WHEN A JUDGE IS LEGALLY REMOVED FOR BEING BIAS PRIOR TO A MOTION
FOR RECONSIDERATION DATE AND THEN PRESIDES AT THAT HEARING AND
MAKES JUDICIAL RULING AGAINST ANY LITIGANT.

(6) ONCE ANY JUDGE HAS BEEN REMOVED FOR JUDICIAL BIAS (CCP# 170.6
OR 170.1(6) STATE OF CALIFORNIA) THAT JUDGE HAS NO LEGAL AUTHORITY
TO PRESIDE AND OR MAKE ANY COURT RULING CONCERNING PETITIONER'S
MOTION FOR RECONSIDERATION. TO DO SO IS A VIOLATION OF LITIGANT'S
CONSTITUTIONAL LEGAL RIGHTS.

(7) SIMPLY ACCESS TO ANY JUDICIAL BODY BY LITIGANTS IN PRO PER
AND IN FORMA PAUPERIS STATUS WITHOUT BEING AFFORDED THE SAME
RIGHTS, PRIVILEGES THAT ARE AFFORDED OTHER LITIGANTS IS A VIOLATION
OF THOSE LITIGANTS 1ST, 5TH, 11TH AND 14TH CONSTITUTIONAL RIGHTS

PETITIONER'S STATEMENT OF (A) HOW THIS WRIT WILL AID COURT'S
APPELLATE JURISDICTION (B) EXCEPTIONAL CIRCUMSTANCES WARRANTED
FOR COURT TO EXERCISE IT'S DISCRETIONARY POWER (C) WHY ADEQUATE
RELIEF CANNOT BE OBTAINED IN ANY OTHER COURT.

(A) HOW THIS WRIT WILL AID COURT'S APPELLATES JURISDICTION:
BACKGROUND FACTS: Petitioner in a Court of Law sought to have A
Judge removed For Bias under (A) Premptory Challenge (CCP# 170.6)
and (B) For Cause (CCP# 170.1(6)).

The Court of Law Judge refused to comply with establish law under
CCP# 170.6 or 170.1(6) and remove himself from petitioner's
litigation.

Petitioner then filed a Writ of Mandate/Prohibition To Compel The Court of Law To Comply with the Law. The Court of Review failed to: (A) Establish What The Existing Law is and (B) Whether The Lower Court of Law had Complied with Existing Law Prior to denying Petitioner's Writ of Mandate/Prohibition.

The United States Supreme Court has a duty to Make and or Interpret Laws such that All litigants Thru Out The United States Constitutional Legal Rights are protected.

The Supreme Court's responsibility is to make sure that the Law is being applied in a uniform, consistent manner so that all litigants constitutional rights are protected.

The Right To a fair Trial/hearing is a basic Constitutional Right of All litigants. This Right includes The Right Of All Litigants to Be Free From Judicial Bias.

The larger issue is that when the Judicial System fails To Follow established Stare Decisis Court Ruling, Justice is denied. The Social and individual costs that occur when the Judicial System fails to adhere To establish principles of Law makes a Mockery of Justice.

The Social Costs of A Judicial Process that fails To Follow Established Stare Decisis Court ruling are (A) Economic costs of additional litigation Process (B) Denial of those litigants Constitutional Right To A Fair Trial/Hearing which results in a denial of Justice.

When petitioner sought legal redress in a Court of Review that Judicial body failed To Review The Merits of My Writ of mandate/Prohibition prior to Court denying my Writ of Mandate/Prohibition.

THE COURT OF REVIEW'S ACTION CONSTITUTED AN ILLEGAL FORM OF CENSORSHIP.

What has happen in my particular case is that the lower Court of Law Judge Has engaged In "Discounting Litigants" Evidence and Failing To Follow Established Law. The Court of Review also engaged in "Discounting Litigants" Legal Documents and failing to Review the Merits of Litigants Writ of Mandate/Prohibition. Petitioner

contents this process is an illegal Form of Censorship.

The process by which any Court of Law Failed To Follow Specific Stare Decisis Court Ruling and the Court of Review failed To review Existing Law in Denying Any Writ of Mandate/Prohibition is an Act of tryanny.

Judicial Tryanny arises when A Judicial Process Denies any Litigant of Their Right To a Fair Trial and A Right To Appropriate Judicial Review.

Petitioner feels that America's judicial System has a responsibility /Duty To establish procedures/Principles of Law that will attempt to ensure that Justice Will be done. When Any Court of Law or Review can Determine the Law without First establishing facts Under Proper rules of evidence A Fair Trial Cannot Be Accomplished.

The Act of any Court of Law's Failure To Follow Specific Stare Decisis limitations and The Court of Review's Failure To Review any Litigants Writ of Mandate on it's merits denies all litigants a Right To a fair trial/Hearing.

In Petitioner's case The Court of Law and Review Discounted Evidence/Legal Documents from Petitioner and as a result failed to Follow established Law.

Petitioner contents that the Judicial process whereby any Judge engages in "Discounting* Evidence/legal Documents brought before that Court is an Act that is a denial of that litigants Right To A Fair trial/hearing.

*DISCOUNTING: This is a process whereby A Judge Acknowledges, discounts Disregards Evidence and or Legal Memorandum of points and authorities in a litigants Trial/Hearing or a Judicial review process.

This Court has Jurisdiction to establish principles of Law/principles such that all litigants constitutional legal Rights are protected as a means of the pursuit of Justice.

My case raises an legitimate legal issues that will help ensure that all litigants Right To A fair Trial/Hearing will be accomplished. This will Aid This Court's jurisdiction Power To Enforce Litigants Constitutional legal Rights.

(B) EXCEPTIONAL CIRCUMSTANCES WARRANTED FOR COURT TO EXERCISE IT'S DISCRETIONARY POWER.

In my particular case a Judge in a Court of Law deviated from established law and denied petitioner's Motion to have that judge removed For Judicial Bias.

The Court of Law Judge DisCounted Evidence/Legal documents submitted by Petitioner before that Court regarding removal of that judge Under State Law CCP# 170.1(6) or CCP# 170.6.

The Lower Court Judge's Discounting Petitioner's Evidence/legal Documents prior to making a Judicial decision denied Petitioner A Right To a Fair trial/Hearing.

Judicial Discounting based on a litigant's Sex,Race,Occupational etc is illegal per say under The 5th and 14th amendments.The act of Judicial discounting a litigant's "Evidence"/Legal Documents based on their Sex,Race,Occupation,etc is not an isolated event. When California's Court of Review refused to review petitioner's Writ of Mandate/Prohibition without First making an examination of the current law and whether lower court had complied with that current law was an act of Discounting petitioner's Writ of Mandate/Prohibition.

The Judicial process of discounting a litigant's "Evidence/Legal documents without any Right To Legal review is a denial of that litigant's Constitutional Right to A Fair Trial/Hearing.

The Court of Review has a legal duty imposed by State & Federal Constitutions To review the law and determine whether A Lower Court of Law acted properly in all Writ of Mandates/Prohibitions brought before that Judicial body.

Currently when any Judge engages in Discounting a litigant's Evidence/Legal documents that party is denied a Right to A Fair Trial/Hearing.

In This particular case The Court of Law Judge made a determination of Petitioner's Legal Rights without first having made a determination of facts Under the proper rules of Evidence.

This Courts Exceptional Powers are warranted in that without this Jurisdiction Judicial Discounting will continue and litigants Right to A Fair Trial/Hearing will continue unchecked.

(C) WHY ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER COURT

Currently the Act of Judicial Discounting has no adequate relief.Courts of Law and or Courts of Review who engage in this process provide litigants with no means of Adequate Judicial Review of this Illegal process.

In Petitioner's case A Lower Court of Law Petitioner Brought legitimate Legal Documents Under CCP# 170.6 and 170.1(6) To Remove a Judge For Bias by A Preemptory Challenge or Cause.

The Lower Court Judge Failed To Comply with the Law Under CCP# 170.6 or 170.1(6),170.3 & 170.4.The Lower Court Discounted all Evidence/Legal Documents that It had failed To Comply with the Law.The Judge then made Court Ruling in Excess of his legal authority.This was done when the Court of Law Judge Make determination of Petitioner's Legal Rights Without any Prior determinattion of Facts Under The Proper Rules of Evidence. Petitioner in complying with the law sought a Writ of Mandate/Prohibition To have The Court of Review examine the appropriate Law and make a determination whether the lower Court had complied with the law.

The Court of Review without any examination of the law and whether the Lower Court had complied with the Law denied Petitioner's Writ of Mandate/Prohibition.

Petitioner then sought review by California's Court .California's Supreme Court Denied petitioner's request To Review the lower court's denial of petitioner's Writ of Mandate.

Thus at this time petitioner has no adequate remedy without The Supreme Court's review of my Writ of Certiorari.

The acts of Judicial DisCounting and Failure of Courts of Review To properly enforce The Law are processes that without Judicial Constrant will continue to deny litigants their Constitutional Right To a Fair Trial.

(B) LIST OF PARTIES: MERRILL REESE INC.

(C) TABLE OF CONTENTS:

(D) NA

(E) CONSIST STATEMENT ON GROUNDS JURISDICTION OF THE UNITED STATES SUPREME COURT IS INVOKED IN THIS CASE. This Writ of Certiorari is invoked by Rule 28 USCA 1651 (A) and rule 2254 which confers that legal right upon the United States Supreme Court to hear this case.

(F) CONSTITUTIONAL PROVISIONS THIS CASE INVOLVES: This Writ of Certiorari involves following Constitutional Provision:(A) First Amendment Right of Access to Judicial Process (B) Fifth Amendment Right of Due Process of Law (C) 11th Amendment Right Pertaining To restraining Any Judge from Engaging in Acts That His Legal Authority Forbids him To do and (D)The 14th Amendment (Equal Protection) Protects Petitioner's Right To A Fair Trial/Hearing which includes Judicial Bias and or an Judges's Illegal Authority Excercised Prior,During or After One's Trial/Hearing.

(G) CONSIST STATEMENT OF THE CASE CONTAINING THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED:

(A)Petitioner had legal right Under CCP# 170.6 or 170.1(6) To remove Lower court of Law Judge For Judicial Bias.

(B) The Lower Court of Law judge Exceeded his legal authority by (1) Ruling Upon his own disqualification (2) Making a Ruling pertaining to Petitioner's Motion For reconsideration .

(C) Petitioner's Writ of Mandate/Prohibition is the Appropriate Legal Vechile to correct a lower Court of Law acting In Excess of it's Legal authority.

(D) The Court of Review exceeded it's legal authority by Failing To make a determination of (1) The Law pertaining to the legal issue before it (2) make a determination whether Lower court of Law had complied with the Law Prior to Denying or Accepting Petitioner's Writ of Mandate/Prohibition.

(F) The Court of Review by DisCounting Evidence and Legal Documents submitted by Petitioner Violated Petitioner's 1st,5th,11th and 14th amendment Constitutional Legal Rights By Making determination of one's Legal Rights Without Prior determination of Facts Under

The Proper Rules of Evidence.

MATERIAL FACTS RELEVANT TO THIS WRIT OF CERTIORARI:

The Legal issue Presented for this Court's Review is Whether An Judicial Process of Discounting* Is a Illegal Act and Whether An Court of Review Violates The Constitution and or It's Duty By Failing To make a determination what is the current Law and Whether the lower Court Complied with the Law Prior to that Judicial body denying any Petitioner A Writ of Mandate/Prohibition.

*DisCounting is a Judicial process Whereby The Judges Discredits, Disregards,Fails to Acknowledge material Evidence/Legal memorandum of Points & Authorities of a litigant based on their Sex, Age, Race Occupation, Economic Status, Dress etc

PETITIONER BROUGHT FORTH VALID MOTIONS TO REMOVE LOWER COURT JUDGE FOR JUDICIAL BIAS.

On 7/29/94 Petitioner Filed and served A Motion For Cause Under CCP# 170.1(6) To The Court and The Court's Clerk.Defendant on 7/29/94 was served by mail with a copy of petitioner's motion.

On 7/29/94 Petitioner Filed and served a Premptory Motion To remove Lower Court Judge.This Motion was properly served upon the court and defendant on 7/29/94.

THE LOWER COURT JUDGE DISREGARDED THE LAW AND MADE COURT RULING WHICH HE HAD NO LEGAL AUTHORITY TO DO.

Petitioner had a hearing on 8/17/94 For a Motion For Reconsideration before The lower Court of Law Judge.The lower court Judge Failed To Answer Petitioner's CCP# 170.1(6) Motion within 10 days of service of being served on 7/29/94.

The Lower Court Judge Presided at the 8/17/94 Hearing on Petitioner's Motion For Reconsideration.On 8/18/94 The Lower court made a court ruling Striking Petitioner's CCP# 170.1(6) based on no proof of service on the court and that the court is unaware of any such service.

JUDGE CAHILL DISCOUNTED* EVIDENCE/LEGAL DOCUMENTS PRESENTED BY PETITIONER FOR THE 8/17/94 HEARING.

Petitioner in a declaration made Judge Cahill aware that The Court Clerk had been served with the CCP# 170.1(6) Motion on 7/29/94. Judge Cahill disregarded and discounted this information for his 8/18/94 Court Ruling Striking Petitioner's CCP# 170.1(6) Motion. Judge Cahill disregarded and discounted the Law by Ruling Upon His Own Disqualification. This is blantly illegal under CCP# 170.3(C)(5).

Judge Cahill disregarded and Discounted The Law by Ruling that Petitioner's Premptory Challenge that legally had been filed and served upon the court on 7/29/94 for a 8/17/94 Hearing was invalid.

LOWER COURT JUDGE EXCEEDED HIS LEGAL AUTHORITY BY MAKING A DETERMINATION OF PETITIONER'S LEGAL RIGHTS WITHOUT FIRST MAKING A DETERMINATION OF THE FACTS UNDER THE PROPER RULES OF EVIDENCE.

In the lower Court of Law Defendant had filed a demurrer. Petitioner had alleged that defendant's demurrer was based on false, misleading and decitful statements a Violation of (A) Cal rules of court 5-200 (B) Penal Code 118 & (C) CCP# 435 & 436.

It is well established that for purpose of testing the sufficiency of the cause of action, the demurrer conditionally admit the truth of all material facts properly pleaded but not he contentions, deductions or conclusions of fact or law. See Committee on children's Television Inc. v General Foods Corp. 35 Cal.3d 197; 1 Well & Brown Cal practice Guide: Civ. Proc. before trial (TRG 1993 #7:43 p 7-17).

The Defendant In a Lower Court of Law Based it's demurrer on Material facts that were not In Plaintiff's legal Complaint. The Alleged demurrer was based on false, misleading and decitful facts. The lower Court of Law made no attempt to determine the facts based on the proper Rules of evidence.

The lower Court of Law made A determination of The Law regarding a demurrer by not accepting the truth of all material facts. Thus Petitioner's Right To A Fair Trial/Hearing was Denied.

THE COURT OF REVIEW 'S FAILURE TO MAKE A DETERMINATION OF THE LAW AND WHETHER THE LOWER COURT HAD COMPLIED WITH THE LAW DENIED PETITIONER'S CONSTITUTIONAL RIGHT BY THE STATE AND FEDERAL CONSTITUTION.

Petitioner on 8/24/94 Served upon The Court of Review a Writ of Mandate/Prohibition seeking Review of lower court's Ruling Upon Petitioner's Motion For Cause under CCP# 170.1(6) and Lower Court's Failure to Follow CCP# 170.6.

Petitioner's Writ of Mandate provide Evidence Thru List of Exhibits and The Law (Writ of Mandate/Prohibition) that Lower Court had (A) No Legal Authority to Rule upon it's own disqualification (CCP# 170.3(C)(5) (B) that Judge Cahill Failure To File an Answer within 10 days caused him to have consented to his own disqualification (CCP# 170.3(4)(5) (C) That CCP# 170.4 mandates that all disqualified Judges cannot make any court ruling (D) CCP# 170.6(2) Mandated that Petitioner's Premptory Challenge properly filed on 7/29/94 Legally removed Judge Cahill from 8/17/94 Hearing.

Petitioner's Writ of Mandate/Prohibition had memorandum of Points and authorities that if The First Judge is unavailable (removed for Cause or Premptory Challenge) a Second Judge may hear a Motion For reconsideration.

THE COURT OF REVIEW MADE NO EXAMINATION OF THE LAW AND MADE NO DETERMINATION WHETHER THE LOWER COURT OF LAW HAD COMPLIED WITH THE LAW PRIOR TO DENYING PETITIONER'S WRIT OF MANDATE/PROHIBITION.

Petitioner on 9/27/94 Filed and served upon California's Supreme Court a Petition For Review: Writ Of Mandate/Prohibition To compel that Judicial body to Compel Court of Review To Comply with the Law.

The California Supreme Court on November 2, 1994 denied petitioner's Petition for Review by a Court order Entry of Judgement.

THE LOWER COURT OF LAW & REVIEW JUDICIAL BODIES DENIAL OF RIGHTS AND PRIVILEGES TO PETITIONER THAT WERE AFFORDED OTHER LITIGANT WAS A DENIAL OF PETITIONER'S CONSTITUTIONAL LEGAL RIGHTS

Petitioner in The lower court of Law had brought Motions/Legal documents that Defendant Attorney had:(A) Made False,decitful & Misleading Statements a violation of Cal Rules of Ct 5-200 (B) Engaged In Perjury a Violation of Penal Code 118 (C) To Strike Legal Documents Under CCP# 435 & 436 For Containing False,Misleading & Decitful statements.

Petitioner submitted "Evidence" and legal memorandum of points & Authorities to support the aforementioned allegations against defendant attorney.The Lower Court Judge Discounted/Disregarded petitioner's afore mentioned Motions/Legal Documents by Failing To Rule upon each of the afore mentioned Motions/legal documents brought before the lower court Judge.

SUMMARY

Simple access to a judicial process does not gurantee that a Litigant has had a Right To a fair trial/Hearing.

In Petitioner's case Motions/legal Documents where filed alleging Attorney Misconduct against defendant's attorney.The Alleged Misconduct against defendant attorney was that he had made Oral and written False,misleading and Decitful statements in a Court of Law and Engaged in Perjury.

The Lower Court of Law Judge Discounted/disregarded "Evidence" and legal documents alleging Unethical conduct by defendant's Attorney Resulted in Petitioner being denied a Right To A Fair trial/Hearing.This was accomplished when The lower court of Law Judge failed to review,consider any evidence and or legal documents submitted by petitioner pertaining to the misconduct of defendant's attorney of record Making False,Misleading and decitful Oral and written statements before that Lower Court of Law Judge.

Petitioner Sought justice by removing the Lower Court of Law Judge For Judicial bias.This was accomplished by petitioner filing & serving The lower Court Judge and defendant under appropriate California Law CCP# 170.6 & 170.1(6).

The Lower Court Judge in defiance of the Law and Evidence submitted by Petitioner Discounted Petitioner's Evidence and Legal Memorandum of Points and Authorities.As a direct result The lower Court Judge Failed To comply with the Law and acted in excess of it's legal authority.

Petitioner then filed an Writ of Mandate/prohibition for review of the lower Court of Law judges alleged illegal acts In excess of their Legal Authority.

The Court of Review DisCounted/Disregarded Petitioner's Evidence and legal memorandum of points and authorities by Failing to (A) Determine what the current Law is pertaining to Legal issue before that Judicial body and (B) Whether lower court of law Judge had complied with the current law in (a) prior to denying petitioner's Petition before that judicial body.

California's Supreme Court refused to review Petitioner's Petition for Review regarding the legality of The Lower court of review's failure to grant petitioner's Writ of Mandate.

(H) REVIEW HOW THE FEDERAL ISSUES WERE RAISED IN LOWER COURT

Petitioner in the lower court of law raised issue that Judge Cahill's failure to "Examine Evidence and Legal documents brought before him was an act of judicial Bias and violated petitioner's Right To A Fair Trial.

Petitioner in the lower court of law filed a Motion For Reconsideration.Petitioner filed legal memorandum of points and authorities where the lower court judge was made aware that Petitioner had a Legal Right to Have another Judge Hear petitioner's Motion For reconsideration by virtue of the Prior Judge was unavailable by being removed for judicial Bias.

The Lower Court of law was also made aware that Petitioner's Right To a fair Trial/Hearing was being denied when that Judicial body made a Court Order/entry of Judgement regarding Petitioner's Motion

for reconsideration where legally the Presiding Judge had been removed by law under CCP# 170.6 & 170.1(6).

Petitioner in the Court of review by virtue of a Writ of Mandate sought judicial review whether the lower court Judge had acted in excess of his legal authority when he: (A) Ruled upon his own disqualification a violation of CCP# 170.3(C)(5) (B) Failed To consent to his own Disqualification under CCP# 170.3(C)(4)(5) by failing to answer petitioner's disqualification motion within 10 days of service or filing (C) Lower Court Judge failed to comply with preemptory challenge under CCP# 170.6(2) (D) Illegally striking petitioner's Disqualification Motion in violation of CCP# 170.4(A)(6)

Petitioner in his Writ of Mandate made The Court of Review aware that Petitioner's Right To A Fair Trial/Hearing was being denied by the Lower Court of Law's acting in excess of their legal authority by engaging in aforementioned acts in A-D above.

Petitioner's Writ of Mandate/Prohibition Table of contents raised Following legal issues: (A) Factual and legal basis that judge Cahill violated CCP# 170.3(B)(4), 170.3(C)(4)(5), 170.4(A)(6) & 170.6(2) (B) Judge Cahill had no legal basis to Rule upon Petitioner's Motion For Reconsideration once he had been removed by Law under CCP# 170.6 or 170.1(6) (C) Judge Cahill's acceptance of petitioner's Preemptory Challenge after 8/17/94 Hearing was illegal (D) Judge Cahill violated CCP# 170.3 & 170.4 by Presiding and making a court ruling after legally being removed by law (E) Judge Cahill's Court ruling on Petitioner's Motion For reconsideration was illegal and (F) Judge Cahill's ruling regarding an amended court order was a violation of CCP# 170.4. Petitioner in His Petition filed before California's Supreme Court raised Following Legal Issues: (A) Whether All Litigants in The state of California had a Legal Right To Disqualify any Court of Law Judge under CCP# 170.6 or 170.1(6) Thereby Having A Legal Right For a Motion For Reconsideration before another Judge. (B) Whether CCP# 170.6 as a matter of law denies any Court of Law

Judge from making a court ruling if a CCP# 170.6 Motion was properly filed and served prior to a Court Hearing.

(C) Whether The Lower Court Judge violated The Law under CCP# 170.4(A)(6) and or CCP# 170.3(C)(5) by striking Petitioner's CCP# 170.1(6) Motion based on lack of alleged proof of service upon a judge that had not been legally determined.

(D) Whether Court of review's Review based on good cause was legal

Petitioner's Petition to California's Supreme Court had indicated that the State and federal constitution guaranteed all litigants a Right to A Fair trial. This right forbid any judicial body from engaging in any acts that were bias and or prejudicial to any litigant as a constitutional guaranteed right.

(I) Petitioner seeks to Review (A) The Court order and entry of Judgement of California's Supreme Court Denial of Petitioner's Petition For review and (B) The Court order & entry of Judgement From California's Court of Review (First District of Appeal) concerning a denial of petitioner's Writ of Mandate.

(J) DIRECT AND CONSIST ARGUMENT AMPLIFYING THE REASONS RELIED FOR THE ALLOWANCE OF PETITIONER'S WRIT OF CERTIORARI

REASON #1: AMERICA'S JUDICIAL SYSTEM UNDER FEDERAL AND STATE CONSTITUTION GUARANTEES ALL LITIGANTS EQUAL ACCESS TO THE JUDICIAL PROCESS. THE ACTS OF JUDICIAL SYSTEM IN PETITIONER'S CASE VIOLATED THIS CONSTITUTIONAL RIGHT OF PETITIONER.

America's Judicial System has developed over time to be the vehicle whereby Legal disputes are handled in an civilized manner thru Courts of Law and Review.

America's judicial System has established various legal principles whereby legal disputes are to be handled in a manner that all litigants Right To a fair trial is the purpose of that Judicial system. One of the Fundamental Legal Principles of america's Judicial System is The Legal Concept of Stare Decisis.

Simple Access To America's Judicial System without Adequate Constitutional protections regarding all litigants Right To a

fair Trial is an empty pursuit of Justice.

Access to a Judicial Body in and of itself does not Gurantee a litigant of their Right to A fair Trial. African American's were finally given the Constitutional right to Vote. This Right to Vote in many states came with it various restrictions such as a poll tax or a ability to read and write etc. These acts denied a signifigant number of African American's of their constituional right To vote.

In Petitioner's case The lower Court of Law Judge DisCounted*/ Disregarded Petitioner's "Evidence and Legal documents (Memorandum of Points & authorities) which resulted in Petitioner's Right To a fair trial/Hearing being Denied. This Judicial Process by Lower Court of law judge For All practice purposes denied Petitioner Equal Access To The Judicial process when The Lower Court Judge acted in excess of his legal authority.

*DisCounting is a process whereby a Judge Fails to consider/review a litigants Evidence and or legal documents based on the sex, race, Occupation etc of a litigant in a judicial proceedings.

The First Amendment Gurantees that all litigants have A right to Petitioner their Government for legal redress. This in essence is a Right of all litigants To Equal Aceess to the judicial System. Thus When the lower Court Judges Actions to DisCount/disregard Petitioner's "Evidence and legal documents in a Judicial Process denied Petitioner's Right To A Right To A fair trial a Violation of Petitioner's First Amendment Legal Rights.

REASON NUMBER 2: THE 5TH AMENDMENT TO THE FEDERAL CONSTITUION GURANTEES ALL LITIGANTS DUE PROCESS OF LAW. THIS RIGHT ENTAILS PROTECTING ALL LITIGANTS RIGHT TO BE PROTECTED FROM JUDICIAL BIAS AND OR PREJUDICE IN ANY JUDICIAL PROCEEDINGS.

Due Process of law as a Principle of Law Under the Federal Constitution Grants all Litigants Procedural and Substance Legal Rights such that One's Right to A Fair Trial is Protected.

THUS WHEN THE LOWER COURT ENGAGED IN JUDICIAL BIAS AND DISCOUNTING PETITIONER'S EVIDENCE AND LEGAL DOCUMENTS PETITIONER'S DUE PROCESS OF LAW WAS VIOLATED.

Petitioner became aware of the lower Court of Law Judge's Bias and prejudice and Filed Motions on 7/29/94 under CCP# 170.6 or 170.1(6) such that the lower Court Judge is removed for Judicial Bias.

REASON#3 IN ALL NONE-JURY TRIALS A LOWER COURT JUDGE IS REQUIRED TO DETERMINE THE FACTS AND THE LAW. THUS WHEN ANY COURT OF LAW JUDGE MAKES DETERMINATION OF LAW WITHOUT A PRIOR DETERMINATION OF FACTS ESTABLISHED UNDER PROPER RULES OF EVIDENCE DENIES THOSE LITIGANTS A RIGHT TO A FAIR TRIAL.

In The Lower Court of Law. The Judge made a determination of Petitioner's legal rights (Demurrer, Motion for Judicial bias, etc) without a prior determination of the facts under The Proper Rules of evidence.

Petitioner and all other litigants have a right to a Fair Trial by established Due Process of Law. All litigants have a right to have facts established by proper rules of evidence from which the appropriate law can be determined in their case.

When the Lower Court of Law Judge determined the Law without A Prior Determination upon facts established by Proper Rules of Evidence that process is arbitrary and irrational which denies any litigant of a Right to A fair trial/Hearing.

REASON #4 LOWER COURT JUDGE (JUDGE CAHILL) EXCEEDED HIS LEGAL AUTHORITY THEREBY VIOLATING PETITIONER'S 11TH AMENDMENT CONSTITUTIONAL RIGHTS:

(A) Judge Cahill took it upon himself to rule Upon his own disqualification a violation of CCP# 170.3(C)(5)

(B) Judge Cahill then struck Petitioner's motion for disqualification For Allegation of lack of proof of service. This was a violation of the Law CCP# 170.4(A)(6).

(C) Judge Cahill Failure To Reply within 10 days of service (By 8/8/94) was a consent to his Own disqualification CCP# 170.3(B)(4) & 170.3(C).

(D) Judge Cahill Violated Premptory Challenge CCP# 170.6(2) By

Failing To Start That Disqualification Prior to 8/17/94 Hearing/Trial
(E) Discounting/Disregarding Petitioner's Evidence and Legal
Memorandum of Points & Authorities Prior to making Court Ruling
at July and August 1994 Hearing.

THE 11TH AMENDMENT FORBIDS ANY JUDGE FROM ENGAGING IN ACTS WHERE
THEY HAVE NO LEGAL AUTHORITY.

All the afore mentioned Acts the Lower Court engaged It exceeded
it's Legal Authority. Thus Petitioner's Right to A fair Trial/Hearing
was denied by Lower Court acting In excess of their legal authority.
Judge Cahill had a legal duty To only apply the law and to act
within his legal authority.

REASON#5: LOWER COURT JUDGE VIOLATED THE 14TH AMENDMENT BY ENGAGING
IN ACTS WHEREBY PETITIONER WAS DENIED SAME RIGHTS AND PRIVILEGES
AFFORDED OPPOSITION.

Lower Court Judge Accepted Opposition's Motion and Their Memorandum
of points and Authorities on face value. Petitioner's Motion and
Their Memorandum of points and authorities was DisCounted/disregarded
For Hearing before that Judge.

The 14th amendment Gurantees all litigants the right to be treated
the same or similar fashions as others in the same or similar
situation.

Petitioner as a Litigant In Pro Per and In Forma pauperis is entitled
to be treated as any other litigant with all the same rights and
privileges that the opposition is afforded by the Lower court
of Law.

When The Lower court Judge DisCounted and Disregarded Petitioner's
Evidence and Legal documents (Memorandum of points and authorities)
petitioner was not treated as opposition whose "Evidence and legal
documents (Memorandum of points and Authorities) in effect denied
petitioner a right to A Fair Trial.

The manner that The Lower Court Judge handled Petitioner's Motions
of disqualification is a prime example how The Court's

Discounting/disregarding Petitioner's Motion Under CCP# 170.6
or 170.1(60 Denied Petitioner A Right to a Fair trial.
The Lower Court Judge Discounted/Disregarded the Law & Petitioner's
Legal Documents By (A) Ruling Upon their own Disqualification
Under CCP# 170.3(C)(5) (B) Striking Petitioner's Motion of
disqualification Which CCP# 170.4(A)(6) Did Not Allow (C) Failure
to Consent to Their Own Disqualification as required by Law under
CCP# 170.3(B)(4) & 170.3(C)(3) (D) Failure of Lower Court To Remove
Himself Prior to 8/17/94 Hearing as required by Premptory Challenge
under CCP# 170.6(2).

REASON#6: A WRIT OF MANDATE/PROHIBITION FOR JUDICIAL BIAS IS THE
APPROPRIATE LEGAL PROCEDURE FOR PETITIONER TO ENGAGE IN UNDER
THE CIRCUMSTANCES

In Petitioner's particular case regarding the issue of judicial
bias under CCP# 170.1(6) or CCP# 170.6 is a Writ of Mandate or
Prohibition See Briggs V Supreme Ct 215 C 336; Keating V Supreme
Ct 45 C2d 440; Oak Grove School Dist. V City Title Ins. Co. 217
CA2d 678; United farm Workers of America V Superior Ct 176 Cal
App.3d 97.

As a means of acheiving uniformity, Consistency and fairness in
America's judicial process The Legal principle of Stare Decisis
has involved into a fundamental aspect of the Principles of Law.

Regardless of whether a party engages in a Writ of Mandate/
Prohibition or Writ of Certiorari A Court of Law is bound by The
Rule of Stare Decisis. See Housing Authority V Superior ct 35 C2d
550; Bodzer Estate 128 CA2d 710; Auto Equity Sales Inc. V Superior
Ct 57 C2d 450; los Angeles County V Supreme ct 253 CA2d 670.

Current Law in the state of California mandates that CCP# 170.6
motions are valid if filed at least five days before the trial. See
People V Hall 86 CA3d 753; People V Superior Ct 160 Cal. App.3d
1081; Kohn V Superior Ct 239 CA2d 428; Woodman V Silerae 263 CA2d
390; Sambrano V Superior Ct 31 CA3d 416; Zdonek V Superior Ct 38
CA3d at 849.

In Petitioner's particular case The Premptory Challenge under CCP# 170.6 was properly filed and served on 7/29/94 prior to a hearing of 8/17/94 in the lower Court.

Current Law CCP# 170.3(B)(4) mandates that a lower court Judge consents to his own disqualification if they fail to reply to disqualification motion within 10 days of filing or service etc .In Petitioner's case a Motion Under CCP# 170.1(6) was filed and served on 7/29/94 for a 8/17/94 Hearing.Lower Court Judge failed to file any answer to the 7/29/94 Motion of their Disqualification. Current California Law CCP# 170.3(C) mandates that a Judge cannot rule upon threir own disqualification.Thus when Lower court judge Struck Petitioner's Motion for disqualification this violated CCP# 170.3(C) and CCP# 170.4(A)(6).

California Law mandates that Premptory Challenge takes effect legally if made prior to court hearing under CCP# 170.6(2).Thus when lower Court of law refused to make petitioner's 7/29/94 Premptory Challenged effective prior to 8/17/94 was an illegal act.

The Court of Review in petitioner's case had a legal Duty to Issue a Writ of Mandate "Where an order bars a substantial portion of a party's case from being heard on the merits ,a petition for writ of mandate to vacate that order may be maintained.see Tauber-arons Auctioneers co. V Superior court 101 Cal.App.3d 273;Vasquez V Superior Court 4 Cal.3d 800,807;Field Research Corp. V Superior Court 71 Cal.2d 110,111.

In Petitioner's case The lower court Judge was removed under CCP# 170.1(6) and or CCP# 170.6.Thus Lower court judge had no legal authority to make any ruling upon petitioner's Motion for Reconsideration.The law is clear that any Judge who is disqualified is refrained from performing any judicial act and a judge's Disqualification is a question of Law.see Kreting V Superior Ct 63 CA2d; Chastain V Superior Ct 14 CA2d 97;Miller V Lux Inc V Superior Ct 19 CA2d 628;Cahoun V Superior Ct 46 C2d 18; Blackman V Mac Coy 169 CA2d 873;Evans V Superior ct 107 CA 372;Keating V Superior Ct 45 C2d 440;Oak Grove School Dist. V City Title Ins. Co. 217 CA2d 678.

The Lower court of Law in The state of California in Making a Ruling Upon A Writ of Mandate/Prohibition or Writ of Certiorari had a Legal duty to (A) establish Current Law of the legal issue brought before that Judicial Body and (B) Whether the lower Court of law had complied with established law under Principle of Stare Decisis principle of law.

The California's Court of Review's failure To adhere to relevant Stare Decisis principle of Law denied petitioner's Right To Access To Judicial process whereby his Right to a Fair Trial/hearing was denied as a matter of law under the 1st,5th,11th and 14th amendments.

This case concerns a fundamental principle of Law ... A party is entitled to have their case Fairly tried according to the established Rules of law ... etc.The Doctrine that respect for the law cannot be inspired by withholding the protection of the law etc No Exceptions are to be watchful for the constitutional and individual rights of all citizens against any encroachment therein is one of the primary duties and obligations of the Courts...See People V Superior Court Harris 1990 217 Cal.App.3d 1332;People V Mendazci 55 Cal.App.2d 625-633.

When any Court of Law Judge engages in Discounting/Disregarding "Evidence and or Legal Documents (Memorandum of points and Authorities) from any Litigants (including In Pro per and In Forma Pauperis Litigants) that Judicial process denies those litigants of Their Right to a fair trial/hearing.

In Petitioner's case when the Lower court Judge failed to Consider Legal documents (Cal Rules of Ct Violation of 5-200;Penal Code 118 Violation by defendant's attorney;CCP# 435 & 436 Violation by defendant's attorney;CCP# 170.6 or 170.1(6)) there was no Appealable court Orders.Thus Petitioner was denied a hearing on the merits in his case.

When Petitioner brought a Motion For Reconsideration in the lower Court and The lower Court judge refused to remove himself from that legal proceeding and denied petitioner's motion Petitioner was denied an opportunity to have his motion heard on it's Merits and that order is not appealable and an appeal from an adverse

judgement is not an adequate remedy.

REASON#7: LOWER COURT JUDGES DISCOUNTING/DISREGARDING "EVIDENCE & LEGAL DOCUMENTS IS A VIOLATION OF THE LEGAL PRINCIPLE ESTABLISHED BY THE UNITED STATES SUPREME COURT IN ELDER V HOLLOWAY 92-8579.

Judge Cahill In A Court of Law and California's Court of Review both engaged in Discounting/disregarding Petitioner's "Evidence and legal memorandum of points and authorities. This is a violation of the principle established In Elder V Holloway 92-8579.

The United States Supreme Court in Edler V Holloway 92-8579 established as a principle of a Law that any reviewing Court must consider all relevant court Ruling whether brought by litigants or known by that judicial Body.

Thus When the Lower Court Judge and the Court of Review was made aware of Legal "Evidence and Legal Memorandum of points and authorities" and they discounted/disregarded that information it violated the principle established by this Supreme Court in Edler V Holloway in 92-8579 as a matter of law.

REASON#8: THE LOWER COURT OF LAW AND CALIFORNIA'S COURT OF REVIEW BY ENGAGING IN DISCOUNTING AND DISREGARDING PETITIONER'S "EVIDENCE AND OR LEGAL DOCUMENTS (MEMORANDUM OF POINTS AND AUTHORITIES)" HAS DENIED PETITIONER A RIGHT TO A FAIR TRIAL. THIS IS MOST EVIDENT IN THIS JUDICIAL BIAS CASE AND BY COURT RULING THAT PETITIONER IS A VEXATIOUS LITIGANT UNDER CCP# 391.

since 1988 California's Court of review has declared that petitioner is a vexatious litigant under CCP# 391. The judicial body relied solely upon the shepardize process to find that CCP# 391 was Constitutional.

The shepardize process that California Court of review relied upon Muller V Tanner 2 CA3d at 443; Taliaferro V Hoogs 236 CA2d at 528 and 237 CA2d at 74; First Western Development Corp V Superior Court 212 Cal.App.3d 860 to declare that CCP# 391 was Constitutional. In Taliaferro V Hoogs 236 CA2d at 528 The Court of Review relied upon Vinncombe V state of california 172 Cal.app.2d at 54 to Justify that security bonding without a prior determination of the merits of one's litigation was legal. Thus The Legal basis for CCP# 391 was upheld.

Petitioner has made California's Court of Law and Review including California's Supreme Court aware that in 1973 California's Own Supreme Court In Breadeau V Superior Court in A Security bonding (Government Code 947 & 951) Overturned Vinncombe V State of California 172 Cal.2d at 54 on the Grounds That (A) Any Security bonding without a Prior determination of Merits was a Violation of any Litigants Due Process Constitutional legal Rights (B) That The reasonableness of the amount of the bond to be posted and inferentially the reasonableness of not requiring any bond and (C) The ability of any litigant to furnish a bond.

It is an established principle of American Judicial Process that Under the Principle of Stare Decisis that when a Lower Court decision (Vinncombe V State of California 172 Cal.2d at 54) is Overturned by a Higher Court of Law (California Supreme Court In Breadeau V Supreme Court 121 Cal Rptr at 585) that lower Court Ruling must be declared Unconstitutional as a Principle of Law.

California's Review System in Ruben Gonzales V Fox 68 Cal.App.3d at Supp page 16; In Allen V Jordanos' 52 Cal.App.3d at 160; Rhodes V Superior Court 90 Cal.App.3d 488 All Security Bonding Issues The Courts Relied Upon Breadreau V Superior Court 121 Cal.Rptr 585 made those security bonding requirements Illegal Taking of Property in that Litigants Due Process of Law Rights are not protected By (A) A meaningful hearing prior to the taking of litigants property and (B) It creates a conclusive presumption that claims by a litigant plaintiff are without merit ... Citing Breadreau V Superior Court. and (C) Litigants ability to post bond is not required

California's Court of Law and Review Failure to abide by accepted Principles of Law is Callous and a disregard for the integrity of the law.

Petitioner contents that Petitioner being In Pro per and In Forma Pauperis Status was a major factor in california's Judicial process in discounting/disregarding Relevant Legal Memorandum of Points and authorities presented by Petitioner in The Constitutionality of CCP# 391.

In essence The lower Court of Law and review's use of the discounting /disregarding petitioner's Evidence and Legal Memorandum of points and authorities as a process is an illegal form of censorship by California's Judicial process. THE MEANS DOES NOT JUSTIFY THE END REGARDLESS IF THE JUDICIAL PROCESS BELIEVES JUSTICE HAS BEEN SERVED OR NOT.

The Failure of California's Court of Law and Review to address legal issues raised in this Writ indicates a blant disregard for the proper application of the law.

THE JUDICIAL SYSTEM PURSUIT OF CIVIL FOREITURE AND CRIMINIAL CHARGES FOR YEARS AS A ACCEPTED JUDICIAL PRACTICE IS A PRIME EXAMPLE OF HOW AN ILLEGAL PROCESS WAS DEEMED AN ACCEPTABLE JUDICIAL PRACTICE.

Pro Per litigants in a The US V \$405,089.23 a civil Foreiture where the Litigants Raised legal issue that Civil Forfeiture of their money was Punishment as was Jail time thus Court acted Illegal in pursuing both civil and forfeiture.

The US District Court For The Ninth Circuit Ruled that where Civil Forfeiture as a punishment and Jail time where separte offenses that constituted Illegal double jeopardy for the same crime.

What has happened is that The Judicial system for years engaged in a process that was an acceptable normal procedure when in fact it was illegal.

When the law becomes a subjective mechanism whereby Justice is rendered based on one's own determination of the law and not the Law itself (Stare Decisis Court ruling) and which judicial review is None reviewable we no longer live in a democratic state but a state run on perceptions and ideas and not by laws and it's principles.

Justice is built on truth & Intregity when Legal disputes are solved on the basis of political ideology and one's personal perception justice then becomes a commodity that is Bought and sold like any other compdity. The end result is that Justice becomes a basis of Economics and therefore the law becomes the servant and not the master of Justice.

Consistency, uniformity and fairness in the Judicial Process becomes fleeing memories because the Law of the land becomes "Money of

the Land, Power of the land. Justice becomes a victim of the legal system and not the force of the legal system.

SUMMARY

Justice is the ideal that American's Judicial process strives to achieve. All litigant's have a Constitutional Right To A fair Trial such that Justice will hopefully prevail.

The Right to A Fair Trial entails a judicial process whereby (A) Facts are determined by proper Rules of Evidnece & judicial proceedings and (B) A Litigant's legal rights are determined by Appropriate law which is administered under Stare decisis principle of law.

The lower Court of law Judge has the legal authority in Ruling upon defendant's demurrer to Test the legal Sufficiency of that pleading before the Court. Whitcombe V County of Yolo 73 Cal.app.3d 698.

The lower court Judge in my case allowed defendant's demurrer to (A) Challenge the truth of the material factual allegations (B) Without any determination that the Allegations made by defendant were indeed The truth as determined by Proper Rules of Evidence and Court Record.

The Law in the State of California is such that The Courts of Law must admit the truth of all material factual allegations within all Legal Complaints filed (See WhitCombe V County 73 Cal.App.3d 698.

The lower Court of Law Judge when he allowed The defendant to challenge the Truthfulness of material factual allegations in a litigants complaint by a demurrer exceeded that Judges legal authority and the law. This Judicial process denied petitioner a Right To a Fair Trial by violating Petitioner's 1st, 5th, 11th and 14th amendment Constitutional Rights.

C*

It was the lower Court of Law Judge determination of Petitioner's legal Rights without a prior determination of "facts" as established by Proper rules of Evidence was An UnConstitutional Act. The Lower Court Judge Discounted/Disregarded Petitioners Evidence/legal memorandum of points and authorities prior to making a determination of petitioner's legal rights. This act denied Petitioner a Right To A Fair Trial/hearing regarding my legal Rights.

The United states Court of Appeals for the Ninth Cicuit D.C. CR-90-01335-JGD In Haroutinoun Ghokassian V Donna E. Shalala Ruled That When a Judge DisCounted/Disregarded "Evidence" in a Court of Law was UnConstitutional.

In Petitioner's case the Lower court of law Judge Violated Petitioner's Right To A Fair Trial by (A) Ruling upon his own disqualification (B) Striking Petitioner motion of Disqualification when by Law he had no legal authority to do so (C) Allowed Petitioner's Premptory challenge after the hearing of 8/17/94 and not on 7/29/94 prior to court hearing as required by the law (D) Ruling upon Petitioner's motion for reconsideration where he had been legally removed by the law CCP# 170.1(6) or CCP# 170.6.

Again the lower Court of Law Judge "Discounted/disregarded "facts" and the law in determining petitioner's legal rights regarding Judicial Bias motions brought forth in that Court of Law.

The Court of Review had a legal duty to determine the law and whether the Lower Court of Law had exceeded their legal authority In Reviewing petitioner's Writ of mandate brought before that judicial body.

The lower Court Judge among others had been made aware that CCP# 391 Constitutional was determined by Court ruling Including Vinncombe V state of california 172 Cal.2d at 54 in a lower court of review Ruling.

24

California's Supreme Court in 1973 In Breadeau V Superior Court 121 Cal Rptr at 585 Ruled That Security Bonding without a prior determination of The merits of that case was UnConstitutional. California's Supreme Court In Breadeau V Superior Court Specifically Ruled that Vinncombe V State of California 172 Cal.2d at 54 was UnConstitutional by denying all litigants right of due process.

The Legal principle of stare decisis (Auto Equity Sales Inc. V Superior Court 57 C2d at 450; LA County V Supreme Ct 253 CA2d at 670) mandated that a lower Court of Law must comply with any Higher Court of Review Ruling. Thus by Principle of Stare Decisis Lower Court of Law and review is bound to follow Court ruling In Breadeau V Superior Ct 121 Cal Rptr at 585.

California's Lower Court of Review and Law by failing to abdide by California's Supreme Court Ruling regarding CCP# 391 has denied petitioner A Right To A fair Trial.

The Powers of The Supreme court is needed To prevent any Court of Law and review from Exceeding their Legal Authority by allowing any defendant's demurrer to challenge The truth of material pleaded allegations without any prior determination of the truthfulness of their allegations under proper Rules of Evidence and (B) Discounting/disregarding "Evidence" and or legal memorandum of points and authorities by any litigant and (C) By failing to comply with Stare decisis Court ruling from a higher Court of Review.

I Fred A. Whitaker declare that the previous statements made in this Writ of certiorari are true and correct under the penalty of perjury executed in Oakland, California on January 5, 1995.

1/5/94

F. ed A. Whitaker

Fred A. Whitaker

25

First Appellate District, Division Four, No. A066997
S042467

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

FRED A. WHITAKER, Petitioner

v.

SAN FRANCISCO COUNTY SUPERIOR COURT, Respondent

MERRILL REESE INCORPORATED, Real Party In Interest

SUPREME COURT
FILED

NOV - 2 1994

Robert Wandruff Clerk

DEPUTY

Petition for review DENIED.

LUCAS

Chief Justice

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

FILED

SEP 22 1994

CLERK OF COURT First Dist
RON D. BROWN CLERK

By _____ DEPUTY

FRED A. WHITAKER

v.

SUPERIOR COURT, SAN FRANCISCO COUNTY,
MERRILL REESE, INC.
A066997

BY THE COURT:

The motion to file the petition for writ of
mandate/prohibition is granted. The application for waiver of court
fees and costs is granted.

The petition is denied.

Dated: SEP 22 1994

ANDERSON, P.J.

P.J.

ORIGINAL

No. 94-7743

Supreme Court, U.S.
FILED

MAR 10 1995

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER 1994 TERM

Fred A. Whitaker
Petitioner,

vs.

Superior Court of California,
San Francisco County
Respondent,

Merrill Reese, Inc.
Real party in interest

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF CALIFORNIA*

**BRIEF FOR THE REAL PARTY IN INTEREST
MERRILL REESE, INC.
SUBMITTED IN OPPOSITION
TO PETITION FOR CERTIORARI**

(Supreme Court Rule 15)

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TABLE OF CONTENTS

Introduction 1

Summary of Proceedings Below 2

Inaccuracies And Omissions In Mr. Whitaker’s Petition 3

 1. Alternative Relief Is Available 3

 2. Mr. Whitaker Has Not Identified Proper Grounds For Jurisdiction 4

 3. Mr. Whitaker Did Not Assert Any Federal Law Claims in the Trial Court 5

Review By Certiorari Is Inappropriate 6

Conclusion 8

TABLE OF AUTHORITIES

Cases

Buchanan v. Buchanan, 99 Cal.App.3d 587 (1979) 7

California Fed. Sav. & Loan Assn. v. Superior Court,
189 Cal.App.3d 267 (1987) 7

Curtin v. Koskey, 223 Cal.App.3d 1334 (1991) 7, 8

In re Whitaker, 6 Cal.App.4th 54 (1992) 1

In re Whitaker, --- U.S. ---, 115 S.Ct. 2 (1994) 1, 4

McCartney v. Superior Court, 223 Cal.App.3d 1334 (1990) 8

People v. Brown, 6 Cal.4th 322 (1993) 4, 6

United States v. State of Wash.,
573 F.2d 1121 (9th Cir. 1978) 6, 7

Statutes

28 U.S.C.A. § 1257(a) 6

28 U.S.C.A. § 1651 4

28 U.S.C.A. § 2254 4, 5

California Code of Civil Procedure § 170.1 2, 3, 5

California Code of Civil Procedure § 170.6 2, 5-7

California Public Resources Code § 14500 2

California Revenue and Taxation Code § 6359 2

California Revenue and Taxation Code § 6373 2

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER 1994 TERM

Fred A. Whitaker
Petitioner,

vs.

Superior Court of California,
San Francisco County
Respondent,

Merrill Reese, Inc.
Real party in interest

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF FOR THE REAL PARTY IN INTEREST
MERRILL REESE, INC.
SUBMITTED IN OPPOSITION
TO PETITION FOR CERTIORARI

Introduction

With this brief, real party in interest Merrill Reese, Inc.¹ responds to the petition for certiorari submitted by Fred A. Whitaker, a recognized vexatious litigant. *In re Whitaker*, --- U.S. ---, 115 S.Ct. 2 (1994); *In re Whitaker*, 6 Cal.App.4th 54, 55 (1992). For the court's convenience, Merrill Reese, Inc. will first summarize the proceedings below, and the legal rulings that prompted Mr. Whitaker's trip to this Court. Merrill Reese, Inc. will also note the

¹ Merrill Reese, Inc. is a duly organized California corporation, with no corporate parents or subsidiaries. (Supreme Court Rule 29.1.)

most significant omissions and inaccuracies in Mr. Whitaker's petition, as required by Supreme Court Rule 15.1, and will then discuss why review by Certiorari is inappropriate in this case.

Summary of Proceedings Below

Mr. Whitaker initiated this lawsuit on April 28, 1994, contending in essence that Merrill Reese, Inc., the operator of a number of drug and sundries stores in San Francisco, California, was improperly collecting recycling taxes on non-alcoholic beer and carbonated fruit drinks. Contrary to the clear language of California's recycling and tax law,² Mr. Whitaker asserted that these beverages were exempt from any recycling surcharge, and that Merrill Reese, Inc. was thus overcharging its customers. Mr. Whitaker also included an allegation that the imposition of California Redemption Value (CRV) on the purchase of beverage containers constituted an illegal tax and that Merrill Reese, Inc. was improperly collecting sales taxes on purchases made with food stamps.

Merrill Reese, Inc., by demurrer, sought to have the complaint dismissed. After the matter was submitted to the assigned law and motion judge, the Honorable William Cahill, and pending the filing of the court's written order, Mr. Whitaker filed three simultaneous motions. He first moved for reconsideration of the Court's oral ruling on Merrill Reese, Inc.'s demurrer (even though no formal order had yet been issued). He also moved to have the law and motion judge, William Cahill, dismissed for cause under California Code of Civil Procedure section 170.1; and he finally moved to have Judge Cahill peremptorily removed under Code of Civil Procedure section 170.6. Judge Cahill proceeded to rule on the motions in the order they

² See California Beverage Container Recycling and Litter Reduction Act (Cal. Pub. Res. Code §14500 *et seq.*) and California Revenue and Taxation Code sections 6359 and 6373.

were filed. On July 27, 1994, he issued his order on the previous demurrer filed by Merrill Reese, Inc., and dismissed all of Mr. Whitaker's claims, except his assertion that Merrill Reese, Inc. was charging sales taxes on food stamp purchases. Judge Cahill next addressed Mr. Whitaker's motion for reconsideration, and on August 18, 1994 denied the motion, finding that Mr. Whitaker had "presented no new or different facts, circumstances or law." Next, Judge Cahill addressed Mr. Whitaker's disqualification motion for "cause" under California Code of Civil Procedure section 170.1, and ruled that the motion was improper since there had been no service of the motion on the challenged judge. Finally, Judge Cahill accepted Mr. Whitaker's peremptory challenge, "but only so far as it relates to motions other than the Motion for Reconsideration."

While proceeding with the prosecution of his lawsuit -- including unsuccessful attempts to expand the action to add even more novel charges, including claims that Merrill Reese, Inc. is unlawfully discriminating on the basis of age by refusing to sell low alcohol and non-alcoholic beer to minors -- Mr. Whitaker sought appellate review of Judge Cahill's decision to rule on Mr. Whitaker's motion for reconsideration prior to the judge's recusal.

Mr. Whitaker first sought a writ of mandate from the California Court of Appeal. His petition was denied on September 22, 1994. Mr. Whitaker next petitioned for review by the California Supreme Court. That petition was denied on November 2, 1994.

Mr. Whitaker has now sought review by certiorari in this Court.

Inaccuracies And Omissions In Mr. Whitaker's Petition

1. Alternative Relief Is Available

In his petition, at section (C) on page 5, Mr. Whitaker asserts that he "has no adequate remedy without The Supreme Court's review of [the] Writ of Certiorari." This is incorrect.

In *People v. Brown*, 6 Cal.4th 322, 332-334 (1993), the California Supreme Court held that if a litigant is denied due process by a judge's refusal to disqualify himself, the litigant may appeal the court's ruling after final judgment is entered in the case, even if an interim petition for mandamus relief has been denied. Since a final judgment has not yet been entered on Mr. Whitaker's complaint, he has not yet exhausted all alternative remedies. Thus, even if Mr. Whitaker had a valid grievance (which he does not), he has a forum to redress his claims -- an appeal following final judgment to the California Court of Appeal.

2. Mr. Whitaker Has Not Identified Proper Grounds For Jurisdiction

On page six of Mr. Whitaker's petition, at item (E), he asserts that the Supreme Court has jurisdiction over this petition by virtue of the provisions of 28 U.S.C.A. §§ 1651 and 2254. Neither provision is appropriate.

28 U.S.C.A. §1651, commonly known as the All Writs Act, provides the framework for the issuance of extraordinary writs, such as mandamus and prohibition, by the Supreme Court and the federal appellate courts. Pursuant to prior order of this Court, however, Mr. Whitaker may not proceed *in forma pauperis* in submitting petitions for extraordinary writs. *In re Whitaker*, --- U.S. ---, 115 S.Ct. 2 (1994). Mr. Whitaker seeks to evade this prohibition by characterizing his pending petition as one for certiorari; he cannot now escape that characterization by asserting this Court's jurisdiction under the All Writs Act. The provisions of 28 U.S.C.A. §1651 thus cannot support Mr. Whitaker's petition.

28 U.S.C.A. §2254 is equally anomalous. That section provides the framework for issuance of writs of habeas corpus -- writs devoted to reviewing prisoner's claims that they have been unlawfully deprived of their liberty. To the best of respondent's knowledge, Mr. Whitaker

has not been confined in any state prison; and his petition does not contain any reference to a deprivation of liberty. Accordingly, 28 U.S.C.A. §2254 also provides no avenue for jurisdiction over Mr. Whitaker's pending petition.

Mr. Whitaker's petition also fails to advise the Court of the date of entry of the court orders that he seeks to have reviewed, as required by Rule 14(e)(i); and, Merrill Reese, Inc. is not certain whether Mr. Whitaker is asking for review of the trial court's orders, or the state appellate court denials of his interlocutory petitions. For the Court's assistance, however, Merrill Reese, Inc. hereby lists the orders that may have provoked Mr. Whitaker's petition to this Court.

7/27/94	Order Sustaining in Part and Overruling in Part Defendant's Demurrer
8/18/94	Amended Order Sustaining in Part and Overruling in Part Defendant's Demurrer and Granting Defendant's Motion to Strike
8/18/94	Order Re: Plaintiff's Challenge Under C.C.P. §170.1(6)
8/18/94	Order Granting Plaintiff's Challenge Under C.C.P. §170.6
9/22/94	Denial by California Court of Appeal of Petition for Writ of Mandate
11/2/94	Denial by California Supreme Court of Petition for Writ of Review

3. Mr. Whitaker Did Not Assert Any Federal Law Claims in the Trial Court

On page 11 of Mr. Whitaker's petition, at item (H), he asserts that he first raised the federal issues invoked in this petition in his Motion for Reconsideration, which was submitted to the California Superior Court. He also intimates that federal issues permeated his lawsuit in the state court. In fact, Mr. Whitaker's lawsuit did not raise a single claim based on federal law, and Mr. Whitaker did not raise any federal issues at all until he submitted his petition for a writ of mandate to the California Court of Appeal. With that petition, Mr. Whitaker stated

simply that Judge Cahill's decision to rule on his motion for rehearing was "[a]n Illegal Act Under CCP# 170.3(C)(3)(5), CCP# 170.6(2) and A Violation of Petitioner's Due Process & Equal Protection Constitutional Legal Rights." (Petition for Writ of Mandate to the California Appellate Court ¶ 1.04.)

Review By Certiorari Is Inappropriate

Both procedurally and substantively, Mr. Whitaker's petition for certiorari is inappropriate. Procedurally, the petition must fail because the California courts below have not yet entered a final judgment. Only the final judgments of state courts may be reviewed by certiorari, and even then, only judgments that adjudicate federal questions are properly considered by this Court:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C.A. §1257(a).

As discussed above, under California law, a litigant who claims he was denied due process by a judge's refusal to timely recuse himself may appeal his claim after judgment in the trial court is entered. *People v. Brown*, 6 Cal.4th 322, 332-334 (1993). No judgment has yet been rendered on Mr. Whitaker's complaint, and Judge Cahill's orders in the trial court, and the appellate denials of Mr. Whitaker's petitions for extraordinary interlocutory relief, are accordingly not final judgments. See also *United States v. State of Wash*, 573 F.2d 1121 (9th

Cir. 1978) (holding that a judge's refusal to recuse himself was not an appealable final order). Thus, review by certiorari is procedurally inappropriate.

Additionally, Mr. Whitaker's claims are, in any event, substantively insupportable. At heart, he claims a federal constitutional right to "judge shop" in state courts -- to file a motion, secure a ruling, and, if dissatisfied, seek to disqualify the judge and simultaneously file a motion for reconsideration to have the matter considered by someone else. California's appellate courts have long rejected such gamesmanship; and not surprisingly, Mr. Whitaker cannot cite a single federal case, statute, rule, procedure, doctrine or theory that even hints that the rule should be otherwise.

In other words, Judge Cahill, and the California appellate courts that considered Mr. Whitaker's writ petitions, directly followed established law and in no way contravened petitioner's federal due process rights. And contrary to Mr. Whitaker's apparent assertions, this established law was not applied invidiously just to him, but has long been applied to all litigants employing similar tactics. Thus, for example, in *Buchanan v. Buchanan*, 99 Cal.App.3d 587, 594-595 (1979) the California court specifically held that a "motion to reconsider was part of the motion to dismiss, and was a continuation of the hearing in which the order was rendered." Accordingly, the court ruled, a recusal motion could not be made while the court was being asked to reconsider its ruling:

[a] challenge under section 170.6 is untimely if filed between the issuance of an order . . . and the hearing on the motion to reconsider that same order. A section 170.6 challenge cannot be lodged while a hearing is pending . . . and it is our conclusion that, for purposes of section 170.6, the hearing on a pretrial motion does not conclude until after the reconsideration motion, if any.

Id; see *California Fed. Sav. & Loan Assn. v. Superior Court*, 189 Cal.App.3d 267, 270-71 (1987) (a judge may not be recused in the middle of an ongoing proceeding); see also *Curtin v.*

Koskey, 223 Cal.App.3d 1334, 1340 (1991) ("One trial court judge may not reconsider and overrule a ruling of another judge"); *McCartney v. Superior Court*, 223 Cal.App.3d 1334, 1340 (1990) ("A motion to reconsider should be heard by the judge who made the underlying order wherever possible").

Mr. Whitaker has no substantive claim; he has not been deprived of any federal rights and he is procedurally barred from seeking certiorari because no final judgment has yet been entered in this case.

Conclusion

The petition for a writ of certiorari should be denied.

Respectfully submitted this 9th day of March, 1995.

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(27)

Supplement
No. 94-7743

Supreme Court, U.S.
FILED
MAR 10 1995
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER 1994 TERM

Fred A. Whitaker
Petitioner,

vs.

Superior Court of California,
San Francisco County
Respondent,

Merrill Reese, Inc.
Real party in interest

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF CALIFORNIA*

**MOTION TO REQUIRE THAT FRED A. WHITAKER COMPLY WITH
SUPREME COURT RULE 38(A) AND RULE 33
BEFORE FILING ANY SUBSEQUENT PETITIONS FOR CERTIORARI**

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8/1/94

TABLE OF CONTENTS

Introduction 1

Analysis 2

Conclusion 4

TABLE OF AUTHORITIES

Cases

In re Whitaker, 6 Cal.App.4th 54 (1992) 2

In re Whitaker, --- U.S. ---, 115 S.Ct. 2 (1994) 1, 2

People v. Brown, 6 Cal.4th 322 (1993) 3

United States v. State of Wash,
573 F.2d 1121 (9th Cir. 1978) 3

Statutes

28 U.S.C.A. § 1257(a) 4

28 U.S.C.A. § 1651 4

28 U.S.C.A. § 2754 4

Supreme Court Rule 39.8 2

Miscellaneous

Moore's Federal Practice, vol. 9 (Matthew Bender 1994) ¶ 110.26 4

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER 1994 TERM

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ON PETITION FOR A WRIT OF CERTIORARI
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Introduction

Pursuant to the provisions of Supreme Court Rule 39.8, this Court has previously directed "the Clerk of the Court not to accept any further petitions for extraordinary writs from" Mr. Whitaker, unless he first files a docketing fee under Rule 38(a) and submits his papers in conformance with Rule 33. *In re Whitaker*, --- U.S. ---, 115 S.Ct. 2, 3 (1994). Because Mr. Whitaker was able to circumvent this order by labelling his present petition as one for certiorari (which it isn't), real party in interest Merrill Reese, Inc.¹ hereby requests that the

¹ Merrill Reese, Inc. is a duly organized California corporation, with no corporate parents or subsidiaries. (Supreme Court Rule 29.1.)

Court's prior order be extended to cover all petitions that Mr. Whitaker wishes to file -- whether or not they are labelled as extraordinary writs. Merrill Reese, Inc. also submits that Mr. Whitaker's application to proceed *in forma pauperis* in this proceeding should be denied.

Analysis

In both this Court, and in California's trial and appellate courts, Mr. Fred Whitaker has been recognized as a vexatious litigant. *In re Whitaker*, --- U.S. ---, 115 S.Ct. 2 (1994); *In re Whitaker*, 6 Cal.App.4th 54, 55 (1992). He has demonstrated an abusive and continuous practice of filing meritless petitions for purposes known only to him, thereby saddling his opponents with unnecessary costs. Supreme Court Rule 39.8 was enacted precisely to curb these abuses, and provides that:

If satisfied that a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ, as the case may be, is frivolous or malicious, the Court may deny a motion for leave to proceed *in forma pauperis*.

By the decision in *in re Whitaker*, --- U.S. ---, 115 S.Ct. 2 (1994), this Court relied upon Rule 39.8, and Mr. Whitaker's pattern of frivolous petitions, in concluding that Mr. Whitaker should be precluded from proceeding *in forma pauperis*. The Court, however, limited its order to the type of petition that Mr. Whitaker had filed in that prior matter -- a petition for an extraordinary writ. Specifically, this Court noted that:

Although petitioner has exhibited frequent filing patterns with respect to petitions for writ of certiorari, we limit our sanctions at this time to the type of relief requested today--styled as petitions for extraordinary writs.

Id., at 3. It is now time to extend the Court's sanction to all petitions that Mr. Whitaker desires to file.

Indeed, with his present petition, Mr. Whitaker has used the Court's circumspection as an escape hatch; for his present petition only nominally seeks a writ of certiorari. In fact, however, what Mr. Whitaker seeks is not available through a writ of certiorari, since the court proceedings below that he wishes to have reviewed are not yet final. Rather, the proceedings in the state court are ongoing, and no judgment has yet been entered. All that has occurred to rouse Mr. Whitaker's appellate protestations is that a trial judge did not recuse himself before ruling on a previously submitted motion. Instead, in accordance with California law, the judge first ruled on the pending matter, and then removed himself from the case. (See Petition for Certiorari at p. 6, item G; see also the Opposition of Merrill Reese, Inc. to Mr. Whitaker's petition, filed herewith.)

Through these events, no final judgment has been entered, for under California law, a litigant who claims he was denied due process by a judge's refusal to timely recuse himself may appeal his claim after judgment in the trial court is entered. *People v. Brown*, 6 Cal.4th 322, 332-334 (1993). That has not yet occurred. See also *United States v. State of Wash.*, 573 F.2d 1121 (9th Cir. 1978) (holding that a judge's refusal to recuse himself was not an appealable final order).

Indisputedly, however, only the final judgments of state courts may be reviewed by certiorari:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C.A. §1257(a).

In fact, Mr. Whitaker apparently recognizes that his petition is not properly framed as a petition for a writ of certiorari, for in his petition he invokes this Court's jurisdiction not under 28 U.S.C.A. §1257(a), the provision governing writs of certiorari, but rather relies on the provisions of 28 U.S.C.A. § 1651, the All Writs Act. But the All Writs Act provides only for the issuance of the type of writs that Mr. Whitaker cannot file *in forma pauperis*: extraordinary writs. See vol. 9 *Moore's Federal Practice* (Matthew Bender 1994) ¶ 110.26, pp. 304-325.

In short, Mr. Whitaker has intentionally submitted a petition for an extraordinary writ under the guise of a petition for certiorari solely to escape this Court's prior sanction order. Such cynical manipulation should not be permitted, and real party in interest Merrill Reese, Inc. accordingly requests that the Court extend its prior ruling to preclude Mr. Whitaker from filing any petitions without abiding by Supreme Court Rule 38(a) and Rule 33.

Conclusion

Mr. Whitaker's application to proceed *in forma pauperis* in this proceeding should be denied, and the Clerk of the Court should be advised not to accept any further filings from Mr. Whitaker unless he complies with Supreme Court Rule 38(a) and Rule 33.

Respectfully submitted this 9th day of March, 1995.

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Telephone: (415) 397-6000

By: 

Douglas A. Applegate

Case Number 94-7743

SUPREME COURT OF THE UNITED STATES

OCTOBER 1994 TERM

Fred A. Whitaker

Petitioner,

vs.

Superior Court of California,
San Francisco County

Respondent.

Merrill Reese, Inc.

Real party in interest

No. 94-7743

PROOF OF SERVICE OF BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

PROOF OF SERVICE

Meri Gargano York certifies and declares as follows:

I am employed in the County of San Francisco, State of California. I am over the age of eighteen years and not a party to this action; my business address is Four Embarcadero Center, Suite 1400, San Francisco, California 94111.

On March 9, 1995, I served the accompanying **BRIEF FOR THE REAL PARTY IN INTEREST MERRILL REESE, INC. SUBMITTED IN OPPOSITION TO PETITION FOR CERTIORARI** on each party to this proceeding by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Fred A. Whitaker
872 - 69th Avenue
Oakland, CA 94621

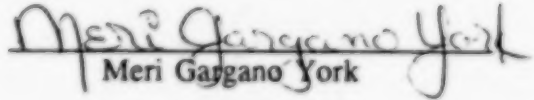
Honorable Judge Cahill
San Francisco Superior Court
633 Folsom Street
San Francisco, CA 94107

Court of Appeal
First Appellate District
303 Second Street, South Tower
San Francisco, CA 94107

Supreme Court
303 Second Street, South Tower
San Francisco, CA 94107

I placed said envelopes, by first-class mail, postage fully prepaid, in the United States mail at San Francisco, California.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 9, 1995.


Meri Gargano York

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Supreme Court, U.S.
FILED
MAR 27 1995
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MAR 30 1995

NO 94-7743
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER 1994 TERM
FRED A. WHITAKER
PETITIONER
VS
SUPERIOR COURT OF CALIFORNIA
SAN FRANCISCO COUNTY
RESPONDENT

MERRILL REESE, INC.
REAL PARTY IN INTEREST

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
UNITED STATES

BRIEF FOR PETITIONER
(FRED A. WHITAKER)
SUBMITTED IN OPPOSITION
TO DEFENDANT'S REPLY BRIEF
UNDER SUPREME COURT RULE#15

FRED A. WHITAKER IN PRO PER
872 69TH AVE.
OAKLAND, CA. 94621
510-569-1343.

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TABLE OF CONTENTS	PAGES
SUMMARY	1-3
DEFENDANT'S SUMMARY OF PROCEEDINGS IS AN INACCURATE PICTURE OF THE JUDICIAL PROCEEDINGS	3-4
RESPONSE TO DEFENDANT'S ALLEGATION OF INACCURACIES AND OMISSIONS IN MR. WHITAKER'S PETITION	4-5
THE CASE RESPONDENT CITING PEOPLE V BROWN 6 CAL 4TH 324 IS DISTINGUISHABLE FROM PETITIONER'S CASE	5
PETITIONER'S WRIT OF CERTIORARI HAS CONSTITUTIONAL GROUNDS FOR REVIEW	6
PETITION PROPERLY ASSERTED HIS FEDERAL CONSTITUTIONAL CLAIMS AT COURT OF REVIEW AND CALIFORNIA'S SUPREME COURT & BEFORE THIS COURT	6-7
PETITIONER'S WRIT OF CERTIORARI HAS BEEN APPROPRIATELY BROUGHT BEFORE THIS JUDICIAL BODY	7-11

TABLE OF AUHTORITIES	PAGES
ITT Community Development Corp. V Barton D.C.,Fla 457 F.Supp. 224 ;Harris V Dept. Of Corrections D.C.,Okla 426 F.Sup.224;US V western Pa Sand & Gravel Assn.,PA 114 F.Supp. 158;Tokio Marine & Fire Ins. Co. Ca 5 LA 332 F.2nd 113 People V Brown 6 Cal 4th 324,334 1	
Micro/Vest Corp. V Superior Ct 150 Cal.App.3d at 1085;Zeller Electronics Lab CombH V Superior Court 206 Cal.App.3d at 1222-1232;Muller V tanner 2 Cal.App.3d at 445 3	
People V Brown 6 Cal 4th at 324	4,5
Arizonia V Fulminante 499 US 279;Gomez V United states 490 US 858; Gray V Mississippi 481 US 648;Rose V Clark 478 US 570 Tummy V Ohio 273 US 510 7	
People V Brown 6 Cal 4th at 333 Buchanan V Buchanan 99 Cal.App.3d 587;California Fed.Sav. & Loan Assn. V Superior Court 189 Cal.App.3d 267;McCartney V Superior Court 223 Cal.App.3d 1334. 9,10	

SUMMARY OF PETITIONER'S LEGAL POSITION

0.00 THE US SUPREME COURT HAS JURISDICTION OF THIS CASE: The Issuance of an extraordinary Writ under 28 USC 1651(a) is not a right but a discretionary right. An Writ of certiorari is a Discretionary Right (See Supreme court Rule 10 & Rule 20.1).

0.01. All Writs Act Provides Federal Court with those Writs necessary to preservation or exercise of its subject matter Jurisdiction ...etc See ITT Community Development Corp. V Barton, D.C. Fla. 1978 457 F.Supp.224; Harris V dept. of corrections, D.C. Okla. 1977 426 F.Supp.224; US V Western Pa. Sand & Gravel ass'n D.C. Pa 1953 114 F.Supp. 158.

.02. Statutory power of reviewing courts to issue mandamus or other extraordinary writs carries with it the power to issue less strenuous relief. See Tokio Marine & fire Ins. Co. Ca 5 LA 1963 322 F.2d 113.

0.03. Defendants allegation that Petitioner had a legal right to appeal Judicial bias as cited by People V Brown 6 Cal 4th 324, 334 was Inaccurate.

0.04. California's Supreme Court In People V Brown supra at 324, 334 Ruled that judicial Bias brought under statutory claims (CCP 170.1(6) & 170.6) is not reviewable by appeal but only by Writ of Mandate.

.05. Since petitioner filed only a statutory Judicial Bias claim by law he had no Right to Appeal Under Court Ruling In People V Brown Cited.

THE CASE DEFENDANT CITED PEOPLE V BROWN 6 CAL 4TH AT 324 WAS DISTINGUISHABLE FROM PETITIONER'S CASE:
In People V Brown An Independent Judge was allowed to rule upon another Judge's Disqualification whereas In my case No Independent

Judge was allowed to Rule upon The Motion to Disqualify Judge Cahill.

PETITIONER PROPERLY RAISED FEDERAL QUESTION IN PARAGRAPH 1.04 OF PETITIONER'S WRIT OF MANDATE.

.06 Petitioner never had an opportunity for an independent Judge To Review his Motion For Disqualification of Judge Cahill. The Writ of Mandate By Law (CCP 170.3) In California's Court of Review was the appropriate judicial Process to First Raise Issue of Petitioner's Constitutional Legal Rights Being violated.

PETITIONER'S WRIT OF CERTIORARI IS CONSISTENT WITH THE PURPOSE OF A WRIT OF CERTIORARI BEFORE THIS COURT:

.07 Petitioner's Writ of Certiorari by Raising Legal issue that all Litigants have a Right at all judicial proceedings to be Free from Judicial Bias that outweighs A Customary Civil procedure that a judge hear All Motions for Reconsideration Promotes Consistency, Fairness, Harmony & Uniformity of The Law.

.08 The Supreme Court's Court order In Re Whitaker 115 S.Ct 2 1994 limiting Petitioner's Right To mandamus and prohibition is based on Court's Wrong Perception of legal facts and issues of case. In Whitaker V Lake Merritt Lodge Petitioner Sought \$40 Million In UnConstitutional taxes not \$3.00. Petitioner Complaint Under Business & Professional Code 17200 was on behalf of Himself and General Public Sought restitution for (A) Illegal Tax from 1965 till 1990 and (B) Illegal Tax raise from 4% to 10% from 1978 till 1990. Petitioner obtained a default Judgement after a Summary Judgement was not answered by defendant. Court awarded Judgement For plaintiff yet Zero damages. BASIS OF APPEAL WAS THAT THE JUDGEMENT WAS IRRATION AND ARBITRARY AND NOT SUPPORTED BY COURT RECORD. I.E. IF LAKE MERRITT LODGE CHARGED PUBLIC ILLEGAL TAXES FROM 1965 TILL 1990 HOW COULD COURT AWARD ZERO DAMAGES?

.09 PETITIONER'S WRIT OF CERTIORARI IS RIPE FOR REVIEW:(A) The legal issues raised by Petitioner's Writ Of Certiorari California's Court of Review has refused to review those issues (B) The legal issues raised by Petitioner's Writ are of First Impression (C) The Judicial Process in The state of California has afforded Petitioner No oral Hearing nor a Written opinion for Petitioner's Writ of Mandate.Thus their is no expedited resolution of all disqualification challenges.

I

DEFENDANT'S SUMMARY OF PROCEEDINGS IS AN INACCURRATE PICTURE OF THE JUDICIAL PROCEEDING

1.0 California's Law is not clear that Once any judge is unavailable (Removal for cause CCP# 170.1(6) or Peremptory Challenge (CCP#170.6))

A Judge cannot hear any Motion for reconsideration;See Micro/Vest Corp. V Superior Court 150 Cal.app.3d at 1085-1090;Zeller Electronics Lab CombH V Superior Court Supra 206 Cal.App.3d at 1222-1232;Muller V Tanner 2 Cal.App.3d at 445.

1.01 Petitioner had alleged in various moving papers in Lower Court of Law that defendant's Demurrer and Memorandum Of Points & Authorities had Violated The Law :(A) CCP# 435&436 -Making False & Misleading Statements (B) Penal Code 118 -Perjury- (C) Cal Rules of Court 5-200 Violating Attorney Ethics (D) CCP# 425.10 -Making False,Misleading statements concerning Material pleaded facts and (E) That Judge Cahill violated Local Rule#14 -Refusing to allow petitioner a right to present oral evidence at 7/14/94 Hearing.

1.02. Judge Cahill's Court Order on 7/27/94 sustained defendant's demurrer only Without dismissing any claim of Petitioner's and not

without leave to amend (Exhibit#9 Writ of Mandate) and Overruling One aspect of demurrer.

1.03. Petitioner on July 22,1994 filed and served upon all parties a Motion For Reconsideration set for 8/17/94 regarding the court ruling of 7/27/94.

1.04. Petitioner on 7/29/94 filed & served upon defendant and the Court's clerk Motions to disqualify Judge Cahill under CCP# 170.6 and or CCP# 170.1(6).

1.05. Judge Cahill Failed to Respond To Petitioner's Motion To Disqualify Him Under CCP# 170.1(6) within the 10 day limitation as required by Law Under CCP# 170.3(C)(4)(5).

1.06. Judge Cahill's 8/18/94 Court order struck Petitioner's CCP# 170.1(6) Motion on Grounds Court Had no Knowledge of proper service upon him.Under current law CCP# 170.4(A)(60 Judge Cahill had no legal authority to strike petitioner's Motion To disqualify Judge Cahill For cause.

II

RESPONSE TO DEFENDANT'S ALLEGATION OF INACCURRACIES AND OMISSIONS IN MR. WHITAKER'S PETITION.

PETITIONER'S STATUTORY CLAIM UNDER CCP# 170.1(6) OR 170.6 AFFORD NO RIGHT TO APPEAL UNDER PEOPLE V BROWN 6 CAL 4TH AT 324,334.

2.0 Defendant claims that California's Supreme Ct In People V Brown 6 Cal 4th 332-334 held a litigant who is denied Due Process By a Judge's refusal to disqualify himself,the litigant may appeal that court Ruling after the final Judgement.

2.01. The Court In People V Brown supra at 324-334 stated that a Statutory claim under CCP# 170.1 is an none appealable order and may be reviewable only by a Writ of Mandate .

2.02. California's Supreme Ct In People V Brown Section CCP# 170.3(D)

does not apply and hence does not Bar review (on appeal from a final Judgement) of NonStatutory claims that a final Judgement is constitutionally invalid because of Judicial Bias.

2.03. Petitioner's Claims of Judicial Bias were statutory violations under CCP§ 170.1(6) and 170.6. Thus Petitioner had no right to appeal as stated In People V Brown 6 Cal 4th 324(5a,5B)324 Regarding his statutory claim of Judicial bias.

III

THE CASE DEFENDANT CITED PEOPLE V BROWN 6 CAL 4TH 324 IS DISTINGUISHABLE FROM PETITIONER'S CASE BEFORE THIS COURT.

3.0 In People V Brown supra 330 the Legal Issue of whether Judge Mortland was disqualified was heard by an Independent Judge Timlin in April 1989.

3.01. Issue of Whether Judge Mortland had failed to file answer within 10 days of filing or service etc was never raised before Judge Timlin's review of The Motion To Disqualify Judge Mortland In the Lower Court of Law.

3.02. Defendant In People V Brown supra at 330 immediately challenged Judge Timlin's Court Order by a Petition For A Writ of mandate.

3.03. In Petitioner's case No Independent Judge reviewed petitioner's Motion of disqualification of Judge Cahill In The lower Court Nor Did any Independent Judge Rule upon the legal issue whether Judge Cahill had filed an answer within the Legal Time frame allowed by Law.

3.04. In Petitioner's case The Lower Court of Law failed To comply with The Law CCP§ 170.3 In that Petitioner's Motion For Disqualification process created No Court record that an Independent Judge had Ruled upon Judge Cahill's Disqualification.

IV

PETITIONER'S WRIT OF CERTIORARI HAS CONSTITUTIONAL GROUNDS FOR REVIEW
4.0 Petitioner's Writ of Certiorari is clear to all parties involved.

Supreme Court Rule 17 other Jurisdiction mandates that A Writ must be filed In accordance under Supreme court 20.

4.01. The issuance of An ExtraOrdinary Writ Under USC 1651(A) is not a matter of right but of Court's Discretion.. whereby adequate relief cannot be obtained in any other form or from any other Court under Supreme Court rule 20.1.

4.02. Petitioner contents that 28 USC 1651(A) under Supreme Court 20.1 includes Writ of Certiorari and Does Not excludes them.

V

PETITIONER PROPERLY ASSERTED HIS FEDERAL CONSTITUTIONAL CLAIMS AT COURT OF REVIEW, CALIFORNIA'S SUPREME COURT AND BEFORE THIS COURT.

5.0 Petitioner In ~~the~~ Writ of Mandate Paragraph 1.04 Identified that His Due Process & Equal protection Rights were denied. Petitioner In His Writ of Mandate Exhibit#3 Indicated that The Lower Court Judge engaged In (A) Judicial Misconduct (B) Failed To Act Impartially (C) Prejudicial Acts (D) Adopted a posture of Hostility To The Law or a party.

5.01. The Law under CCP§ 170.3(D) mandates that Question of the disqualification be reviewable By Writ of Mandate.

5.02. Thus by Law The Court of Review would be the lowest Court whereby the issues of Petitioner's Rights being Violated which include my Constitutional Legal Rights. In my Writ of Mandate I raised Constitutional Violations to my Legal Rights In paragraph 1.04 of My Writ of Mandate.

5.03. In this case The Lower Court of Law's Failure to have An Independent Judge review whether Judge Cahill was Disqualified was a

Violation of Petitioner's Constitutional Legal Rights. This was stated in paragraph 1.04 of petitioner's Writ of Mandate.

VI

PETITIONER'S WRIT OF CERTIORARI HAS BEEN APPROPRIATELY BROUGHT BEFORE THIS JUDICIAL BODY

6.0 The Purpose of accepting any Writ of Certiorari is To promote Consistency, Uniformity, Harmony & Fairness In The Application of the Law.

6.01. Established law is that A Judicial process by a Judge who is not Fair or impartial constitutes structural defect In the constitution of the Judicial mechanism and resulting Judgement is reverisable error per say. See Arizona V Fulminante 499 US 279; Gomez V United States 490 US 858; Gray V Mississippi 481 US 648; Rose V Clark 478 US 570; Tummy V Ohio 273 US 510.

6.02. California's Judicial process has Codified petitioner's right to be Free from Judicial Bias under CCP§ 170.6 & 170.1(6) and other Code of Civil procedure: (A) CCP§170.3(C)(3) mandates that within 10 days after filing or service whichever is later ... a judge may file a written verified answer (B) CCP§ 170.3(C)(4) Mandates that a judge who fails to file a consent or answer within time allowed as specified in (a) shall be deemed to their own disqualification (C) CCP§170.3(C)(5) mandates that no Judge who refuses to recuse themselves shall pass upon their own disqualification or upon the sufficiency in law, fact or otherwise the statement of disqualification. In every such case the question of disqualification shall be heard and determined by another Judge agreed upon by all parties (D) CCP§170.3(C)(6) mandates that the Judge deciding the question of disqualification may decide the question on the basis of

the statement of disqualification ... etc.

6.03. Judge Cahill In The Lower court of law violated The Structure Judicial Bias Rights of Petitioner By: (A) Filing to answer Petitioner's Written statement of disqualification within 10 days as required by CCP§170.3(C)(3): (B) Judge Cahill's Failure to file answer to disqualification within legal time limit violated CCP§ 170.3(C)(4) (C) Judge Cahill Ruled upon his own disqualification and failed to have another Judge agreed upon by all parties Rule upon his disqualification a violation of CCP§170.3(C)(5)

6.04. The determination of the question of the Disqualification of any Judge Under CCP§170.3(D) is not an appealable order but Reviewed only by Writ of mandate.

6.05. In The State of California Writ of Mandate Process Mandates that The reviewing Court To Compel the performance Of An Act which The Law Specially enjoins.

6.07. In This case Petitioner had a vested Legal Right that The Lower Court of Law Judge Cahill abide by The Structure Judicial Bias Law (CCP§170.3(C)(3)(4)(5)).

6.08. CCP§170.3(D) Mandates that The determination of a Judge's Disqualification is Reviewable By A Writ of Mandate.

6.09 Petitioner's Writ of Certiorari Raises Important Legal issues : (A) Court of Law Failure To Comply with Structure Judicial Bias (CCP§ 170.3(C)(3)(4)(5) Violates Petitioner's Constitutional Legal Rights (B) California's Court of Review's Writ of Mandates failure To Determine The Appropriate Law and Whether Lower Court of Law complied with the Law violates principle In Edler V Holloway Violates Petitioner's Right To A fair Trial (C) That When any Judge

DisCounts/Disregards Evidence/facts and the Law without Legal Justification Is Judicial Basis.

6.10 The Purpose of Statutory Judicial Bias is to Promote Judicial Economy By forcing Expedited resolution of all disqualification challenges (See People V Brown 6 cal 4th at 333.

6.11 For California's Court of Review To allow any Lower Court judge To deliberately violate The Law and not To File A Writ of mandate to compel performance of an Act which the law specially enjoined (CCP# 170.3(C)(3)(4)(5) Denies Petitioner A Right To A fair trial.

PETITIONER'S WRIT OF CERTIORARI RAISES AN ISSUE OF FIRST IMPRESSION:WHETHER A LOWER COURT OF LAW JUDGE WHO ENGAGES IN DISCOUNTS/DISREGARDS FACTS/EVIDENCE/LAW WITHOUT ANY LEGAL BASIS CONSTITUTES AN ACT OF JUDICIAL BASIS.

6.12 In United states of America V Mark R. Hanna 95 Daily Journal DAR 3143 Court Ruled that by imposing a sentence that was based on materially false and unreliable information,VIZ,the Unsupported and uncorroborated allegations of Hanna's Co-defendant ,Ronald bennett was unConstitutional.

6.13 The United States Court of Appeals for The Ninth Circuit D.C. CR 90-01335 -JGD In Haroutinovn Ghokassian V Donna & Shalala Court ruled that when a judge Discounted/Disregarded Evidence In a Judicial process that was UnConstitutional.

DEFENDANT'S CASE LAW CASES(BUCHANAN V BUCHANAN 99 CAL.APP.3D 587;CALIFORNIA FED.SAV. & LOAN ASSN. V SUPERIOR COURT 189 CAL.APP.3D 267,270-271;MCCARTNEY V SUPERIOR COURT 223 CAL.APP.3D 1334,1340) BROUGHT BY RESPONDENT BEFORE THIS COURT WERE ALL INAPPROPRIATE FOR ISSUES RAISED BY RESPONDENT.

6.14 In Buchanan V Buchanan 99 Cal.App.3d at 587 Court Ruled that a CCP# 170.6 Motion Challenge that the hearing on a pretrial motion does not conclude until after the Reconsideration Motion if Any.

6.15 In Petitioner's case Petitioner Brought Both Peremptory Motion

Under CCP# 170.6 & A Motion For Cause Under CCP# 170.1(6) Prior To A Motion For Reconsideration.Thus Buchanan V Buchanan was not Controlling.

6.15 The court In California Fed.Sav. & Loan Assn. V Superior Court at 189 Cal.App.3d at 267 Ruled that The Peremptory challenge was considered Untimely under CCP# 170.6 because The Motion was brought after Summary Adjudication of issues and during the Class recertification process involved complex issues of law that had been decided thus the 170.6 peremptory challenge was denied.

6.16 The Court In California Fed.Sav. & loan Assn V Superior Court Supra at 271 Had not determined that Peremptory Challenge before a pretrial Motion was illegal but that It was untimely.

6.17 In Petitioner's case no Issues of Law had been decided as a matter of law and Petitioner had brought Peremptory and a Motion For causes Disqualification Prior to A Motion For Disqualification which wasn't The case In California Fed.Sav. & Loan Assn V Superior Court Supra at 271.

6.18 The Court In McCartney V Superior Ct 223 Cal.App.3d at 1340 Ruled that Under CCP# 170.3 Written verified statement setting forth grounds for disqualification must be served on each party and the judge or clerk.The Court also Ruled that Under CCP# 170.4 if a statement for disqualification on it's face discloses no legal grounds for disqualification the trial Judge against whom it was filed may order it stricken.In McCartney V Superior Ct supra the Court ruled that the statement that Commissioner Zakon is a graudate of defendant's USC is not a legal ground for disqualification.

6.19. In Petitioner's case The Lower Court judge filed no response within the legal time limit as required by Law (CCP# 170.3(C)(3)(4).

6.20 In Micro/vest Corp. V Superior Ct 150 Cal.app.3d supra 1085 Court ruled that A Judge challenged for cause may not Rule on threshold questions such as timeliness or sufficiency of the statement of prejudice.

6.20 In petitioner's case the lower court judge ruled upon the timeliness and the sufficiency of the statement of prejudice.

THE THREE CASES CITED BY RESPONDENT HAS NOT ESTABLISHED THAT PETITIONER HAD NO LEGAL RIGHT TO REMOVE A JUDGE FOR JUDICIAL BIAS PRIOR TO A MOTION FOR RECONSIDERATION AFTER FILING PEREMPTORY AND MOTION FOR CAUSE.

6.21 The Lower Court Judge Cahill's Striking Petitioner's Motion For Cause and Allowing Petitioner's Peremptory Challenge only after his decision In A Motion For Disqualification were Final Judgements.

6.22. Petitioner's Legal position is that any Judge has a legal right to preside at any legal proceeding until such time he has not engaged In Judicial Bias or Procedures that allow for their removal .

6.23 For any Judge to make any court ruling after issue of their Judicial Bias has been resolved by Proper Civil Procedures of Law creates a "Structural" defect in the constitution of the trial mechanism.

I Fred A. Whitaker declare that the above statements are true and correct under the penalty of Perjury executed In Oakland, California on March 18, 1995.

March 18, 1995

Fred A. Whitaker

Fred A. Whitaker
117

PROOF OF SERVICE BY MAIL
UNDER CCP# 2015.5

I DECLARE THAT I FRED A. WHITAKER AM A CITIZEN OF THE UNITED STATES AND LIVE IN OAKLAND CALIFORNIA; AND THAT I AM OVER THE AGE OF 18 YEARS OLD AND THAT I AM PARTY TO THIS LEGAL PROCEEDINGS AND THAT MY HOME ADDRESS IS 872 69TH AVE. IN OAKLAND ,CALIFORNIA 94621.

THAT ON 3/21/95 I SERVED A TRUE COPY OF THE ORIGINAL DOCUMENT ENTITLED: PETITIONER'S OPPOSITION

TO DEFENDANT'S REPLY BRIEF

BY PERSONALLY DELIVERING THOSE DOCUMENTS TO THE FOLLOWING ADDRESS:

DOUGLAS A. Applegate
Bay, Ziegler, Anderson
& Parker
Firm Embroidered Center
147th Floor
SF, CA. 94111
Judge Cahill
SF Superior Court
633 Folsom St
SF CA.

Supreme Court
303 2nd St
2nd Floor
SF, CA.

Court of Appeals
303 2nd St
6th Floor
SF, CA.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT , EXECUTED ON 3/21/95 IN OAKLAND, CALIFORNIA

DATE: 3/21/95

Fred A. Whitaker

2

SUPREME COURT OF THE UNITED STATES

FRED A. WHITAKER *v.* SUPERIOR COURT OF
CALIFORNIA, SAN FRANCISCO COUNTY
(MERRILL REESE, INC., REAL
PARTY IN INTEREST)

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 94-7743. Decided April 17, 1995

PER CURIAM.

Pro se petitioner Fred Whitaker has filed a petition for writ of certiorari and requests leave to proceed *in forma pauperis* under Rule 39 of this Court. Pursuant to Rule 39.8, we deny petitioner's request to proceed *in forma pauperis*.^{*} Petitioner is allowed until May 8, 1995, to pay the docketing fees required by Rule 38 and to submit his petition in compliance with this Court's Rule 33. For the reasons explained below, we also direct the Clerk of the Court not to accept any further petitions for certiorari from petitioner in noncriminal matters unless he pays the docketing fees required by Rule 38 and submits his petition in compliance with Rule 33.

Petitioner is a prolific filer in this Court. Since 1987, he has filed 24 petitions for relief, including 6 petitions for extraordinary relief and 18 petitions for certiorari. Fifteen of the twenty-four petitions have been filed in the last four Terms, and we have denied all 24 petitions without recorded dissent. We also have denied petitioner leave to proceed *in forma pauperis* pursuant to Rule

^{*}Rule 39.8 provides: "If satisfied that a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ, as the case may be, is frivolous or malicious, the Court may deny a motion for leave to proceed *in forma pauperis*."

3 pp

39.8 of this Court for the last three petitions in which he has sought extraordinary relief. See *In re Whitaker*, 513 U. S. ____ (1994); *In re Whitaker*, 511 U. S. ____ (1994); *In re Whitaker*, 506 U. S. ____ (1992). And earlier this Term, we directed the Clerk of the Court "not to accept any further petitions for extraordinary writs from petitioner in noncriminal matters unless he pays the docketing fee required by Rule 38(a) and submits his petition in compliance with Rule 33." 513 U. S., at ____ (slip op., at 2). Though we warned petitioner at that time about his "frequent filing patterns with respect to petitions for writ of certiorari," *ibid.*, we limited our sanction to petitions for extraordinary writs.

We now find it necessary to extend that sanction to petitions for certiorari filed by petitioner. In what appears to be an attempt to circumvent this Court's prior order, petitioner has labeled his instant petition a "petition for writ of certiorari" even though it would seem to be more aptly termed a "petition for an extraordinary writ": he argues that the California Supreme Court erred in denying his petition for review of a California Court of Appeals order which denied his petition for writ of mandate/prohibition seeking to compel a California trial judge to make a particular ruling in a civil action filed by petitioner. And the legal arguments petitioner makes in his instant "petition for writ of certiorari" are, just as those made in his previous 18 petitions for certiorari, frivolous. As we told petitioner earlier this Term, "[t]he goal of fairly dispensing justice . . . is compromised when the Court is forced to devote its limited resources to the processing of repetitious and frivolous requests." *Ibid.* (internal quotation marks and citation omitted).

Petitioner's abuse of petitions for certiorari has occurred only in noncriminal cases, and we limit our sanction accordingly. This order therefore will not prevent petitioner from filing a petition for certiorari to challenge criminal sanctions which might be imposed

upon him. But like other similar orders we have issued, see *In re Sassower*, 510 U. S. ____ (1993); *Day v. Day*, 510 U. S. ____ (1993); *Demos v. Storrie*, 507 U. S. ____ (1993); *Martin v. District of Columbia Court of Appeals*, 506 U. S. ____ (1992), this order will allow the Court to devote its limited resources to the claims of petitioners who have not abused our process.

It is so ordered.

JUSTICE STEVENS, dissenting.

A simple denial would adequately serve the laudable goal of conserving the Court's "limited resources." *Ante*, at 3. See generally *In re Whitaker*, 513 U. S. ___, __ (1994) (STEVENS, J., dissenting).

I respectfully dissent.